

Construction Regulations

Supplementary Slides

1

OSH

SA Framework

2

Characteristics of SA OH&S legal framework

- A departure from the traditionally prescriptive or 'deemed-to-comply' or 'command-and-control' approaches to a performance-based approach in terms of which no standards for compliance are set
- The redistribution of responsibility for construction H&S away from the contractor, who was previously solely responsible, to include all participants in the construction process from the client through to the final end-user.

3

Characteristics of SA OH&S legal framework

- The compelling of H&S management as an obligation into the planning and design of virtually all construction projects.
- Emphasis on the identification of construction hazards and the assessment of risks to eliminate, avoid or, at the very least, reduce perceived risks.

4

Characteristics of SA OH&S legal framework

- Consideration of H&S issues not just during the construction life of the project, but from project inception through to the final demise of the facility by demolition, including the operation, utilisation and maintenance periods.
- The introduction of a new participant to the construction process, the client-appointed H&S agent, tasked on behalf of the client to coordinate the other participants and documents to facilitate better management of H&S on construction projects.

5

Characteristics of SA OH&S legal framework

- Mandatory H&S specifications and plans as instruments facilitating exchange and communication of H&S issues between all participants in the construction process, on all projects.
- Mandatory compilation of an H&S file by the principal contractor to be handed over to the client upon completion of the facility.

6

Law & Cases

7

Purpose of workers compensation legislation

Price J in *R v Canquan*

...is designed to protect the interests of employees and to safeguard their rights, and its effect is to limit the common-law rights of the employers and to enlarge the common-law rights of employees. The history of social legislation discloses that for a considerable number of years there has been progressive encroachment on the rights of employers in the interests of workmen and all employees. So much has this been the purpose of social legislation that employees have been prevented from contracting to their detriment. They have been prohibited from consenting to accept conditions of employment which the legislature has considered are too onerous and burdensome from their point of view.

8

Common law

At common law, an employer has a duty to provide a safe working environment, safe equipment and tools and a safe method of work.

SAR & H v Cruywagen 1938 CPD 219 at 229

9

Action in delict

This would require the employee to prove negligence on the part of the employer. An employee might have great difficulty in proving his or her claim and incur high legal costs in doing so.

Van Deventer v Workmen's Compensation Commissioner (1962 (4) SA 28 (T)) identified the following common law duties

- if the work is of a dangerous nature the employer must take all reasonable precautions to ensure the safety of the workers;
- the employer cannot be held liable for any latent defects in the plant which could not be noticed by reasonable examination; and
- the employer must ensure that employees do not suffer as a result of the employer's personal negligence.

10

“reasonable person” test

- Would a "reasonable person" in the position of the employer have foreseen the possibility that a person may be injured?
- Would the "reasonable person" have taken steps to guard against the accident which gave rise to the injury?
- Did the employer in question fail to take the steps a reasonable person would have?

11

Section 35 of (COIDA) and the common law

- Section 35 prevents an employee who has been injured on duty to claim damages from the employer.
- Instead, the employee must now claim from the Compensation Commissioner.
- The COIDA actually makes it easier for employees as they do not have to prove, that the employer acted negligently (in other words not as a reasonable man) in order to claim compensation.
- The employee will, however, only be entitled to a fixed amount of compensation and this could be considerably less than that which the employee could have claimed if he had been successful with a delictual claim.

12

MacDonald v General Motors South Africa (Pty) Ltd

The Court dealt with the alleged failure on the part of an employer to adequately protect a tank platform, by the provision of railings, so as to prevent accidents to persons.

In dealing with the standard of care, which should be taken in such a case, Eksteen J held as follows:

“here again the test as to whether the protective devices contended for by the plaintiff ought to have been supplied must be the view that a reasonable person would take. An employer would only be expected to guard against accidents which are likely to happen in the ordinary common use of the machinery”.

13

Kruger v Charlton Paper of South Africa (Pty) Ltd

The Court held that a person in the position of the employer (*Charlton Paper of South Africa (Pty) Ltd*), would not have foreseen that the plaintiff, a qualified electrician, would have squeezed through a gap on the side of a live electrical terminal which was not isolated and which conduct resulted in him sustaining certain injuries

14

Principles of Delict (3 edition) JC Van Der Walt and JR Midgley at para 121

The concept of the reasonable person and such person's attributes:

"The criterion of the reasonable person is the embodiment of an external objective standard of care. The qualities, experience, idiosyncrasies and judgment of the particular actor are in principle not relevant in determining the qualities of the reasonable person. The law requires adherence to a generally uniform and objective degree of care. The reasonable person is the legal personification of the ideal standard to which everyone is required to conform. Such a person represents an embodiment of all the qualities which we require of a good citizen":

15

Silva's Fishing Corporation (Pty) Ltd v Maweza 1957 (2) SA 256 (A)

Common law claim for damages. The widow of a deceased seaman instituted proceedings against the owner of a fishing fleet for damages alleged to have been caused to her through the owner's negligence which allegedly resulted in the death of her husband.

The court held that the employer was under a legal obligation to maintain both the boat and the engine in a proper condition.

The court further held that it was the duty of the employer either to have taken such steps as were reasonably in its power to restore the boat to a state of navigability where it might have been found at sea, or to have had it brought back to the shore with the crew. Its failure to do so amounted to negligence.

16

Piliso v Old Mutual Life Assurance Co (SA) Ltd & Others [2007] JOL 18897 (LC)

An employee was a victim of sexual harassment at the workplace by another employee, and brought claims against the employer in terms of the EEA, the Constitution and common law.

It was held by the Labour Court that the employer had violated the employee's right to fair labour practices in terms of section 23 of the Constitution.

The employer was ordered to pay the employee an amount of R45 000 as constitutional damages.

17

Media 24 Ltd and Another v Grobler [2005] 3 All SA 297 (SCA)

The employee sought damages in terms of common law which she had suffered as a result of sexual harassment to which she alleged she had been subjected by another employee of the employer ("the perpetrator").

The employer had been sued in its capacity as the perpetrator's employer.

The court found that the employee had succeeded in establishing a negligent breach by the employer of a legal duty to its employees to create and maintain a working environment in which, amongst other things, its employees were not sexually harassed by other employees in their working environment.

The court found that the employer's duty of care cannot be confined to an obligation to take reasonable steps to protect them from physical harm, and also included a duty on the part of the employee to protect them from psychological harm caused, for example, by sexual harassment by co employees.

18

Buitendag and Others v Government Employees Pension Fund and Others [2006] 4 BPLR 297 (T))

The dependants of an employee claimed in terms of common law that the employer had committed a delict in not establishing that the information supplied to a retirement fund was correct, resulting in the incorrect payment to the dependants by the fund.

The court held that there could be no doubt that the employer owed its employees a duty of care to see that their interests were properly cared for, in this case that proper information was transmitted by it to the fund. On principle, the duty of the employer to ensure that an employee's interests are

19

Mankayi v Anglogold Ashanti Limited [2011] JOL 27008 (CC)

The applicant sued the respondent mining company for damages on the basis that during his employment, the respondent negligently exposed him to harmful dust and gases. The issue to be determined was whether section 35(1) of COIDA extinguishes the common law right of mineworkers to recover damages against the mine owners if such employees are covered by ODIMWA and are as such not entitled to claim under COIDA.

The Constitutional Court held that section 35(1) of COIDA indicates clearly that it was directed to, and covered, employees entitled to claim under COIDA. Therefore the prohibition to claim delictual damages from an employer in terms of section 35(1) of COIDA does not apply to those employees excluded from COIDA.

It was held that employees claiming under ODIMWA still have the right under common law to sue their employers for delictual claims.

20

Minister of Defence and Military Veterans v Liesl-Lenore Thomas [2015] ZACC 26

The respondent, a medical doctor employed by the Western Cape Provincial Government ("Provincial Government") was injured while on secondment to a military hospital under control of the applicant, the Minister of Defence and Military Veterans ("the Minister"). The respondent had lodged a claim in terms of COIDA against the provincial government as well as delictual damages against the Minister as a third party.

The Minister argued that all organs of state fell under one umbrella and therefore the Minister could not be sued as a third party as it was to be considered the employer excluded in terms of section 35(1) of COIDA. The Constitutional Court confirmed that each sphere of government is separate from the others,

even though they are interdependent and interrelated. On looking at the spirit, purport and objects of the Bill of Rights the Court held that the respondent had a fundamental right to bodily integrity and security of her person, and therefore she had a right that underlies her common law claim for workplace damages. The Court found in favour of the respondent's common law entitlement to sue the Minister for delictual damages suffered as a result of her injury

21

Member of the Executive Council for the Department of Health, Free State Province v EJM [2015] 1 All SA 20 (SCA)

While on duty at a provincial hospital, the respondent was raped by an intruder. The respondent, a doctor, claimed damages from the appellant, the MEC representing the relevant provincial Department of Health as a result of the rape. The MEC filed a special plea in which he asserted that the doctor's claim was barred by section 35(1) of COIDA.

The Supreme Court of Appeal confirmed that in order for a common law damages claim against an employer to be precluded, the injury must have occurred during the course of an employee's employment and it must also arise out of that employment.

According to the Court the question to be asked is whether the act causing the injury was a risk incidental to the employment. The Court could not see how a rape perpetrated by an outsider on a doctor while on duty at a hospital could be said to have arisen out of the doctor's employment.

The appeal was therefore dismissed.

22

Engineering Council of SA & another v City of Tshwane Metropolitan Municipality & another [2008] (T)

The second applicant was an engineer registered with the first applicant, a professional body registered under section 18 of the Engineering Profession Act 46 of 2000 ("the EPA"). In his position as Managing Engineer: Power System Control ("PSC") with the first respondent, a local authority, he had refused to co-operate with the appointment of certain black people who had obtained excessively low marks in performance tests which were part of the selection process. He considered, inter alia, that it would be a danger to the public to appoint them as PSC operators.

Conflict developed between the first applicant and one the municipality's General Managers who had informed the first applicant that, given the employment equity numbers, candidates who "did not comply with equity requirements" would "not be listed at all". As a result certain appointees were removed from the list.

In response the second applicant raised his concerns with other officials and warned them of his intention to report the matter to the Department of Labour, which he did. In addition he asked to be relieved of his duties under regulation 2(7) promulgated under the Occupational Health and Safety Act 85 of 1985 ("OHSA") related to an obligation to ensure various safety requirements.

23

Engineering Council of SA & another v City of Tshwane Metropolitan Municipality & another [2008] (T)

A few months later he was called before a disciplinary enquiry where he was charged with misconduct for writing the letter to the Department of Labour "without authority". When the matter was postponed the applicants approached the high court for urgent interim relief to interdict the respondents from proceeding with the hearing pending the outcome of this application for a final interdict to restrain the respondents from imposing disciplinary sanction on the second applicant.

His defence against the charge of misconduct was that he had had a duty to make the disclosure, which was protected under the EPA, the OHSA and the Protected Disclosures Act 26 of 2000 ("the PDA").

24

Engineering Council of SA & another v City of Tshwane Metropolitan Municipality & another [2008] (T)

Held that in terms of section 39(2) of the EPA a registered person who, in the public interest, refuses to perform an act, or informs the council or other appropriate authority of an act performed by any other person which is likely to endanger the health or safety of the public or fellow employees, is not liable for that refusal, omission or information.

In addition, section 26 of the OHSA forbids victimisation of employees who give information to the Minister "or any other person charged with administration" for refusing to do anything which he is prohibited from doing in terms of the OHSA.

The court could therefore not conclude that disciplinary proceedings against the second applicant were lawful.

25

Engineering Council of SA & another v City of Tshwane Metropolitan Municipality & another [2008] (T)

Held that section 15(4) of the Employment Equity Act 55 of 1998 forbids employers to take any decision that would establish an absolute barrier to the employment of people who are not from "designated groups".

26

Engineering Council of SA & another v City of Tshwane Metropolitan Municipality & another [2008] (T)

In the circumstances, the court could not express approval for actions taken by the respondents which were aimed at achieving equity transformation regardless of safety considerations. There had to be a sensible balance between employment equity and safety.

Held that the second applicant's disclosure was protected under sections 2(1), (3), 4(1) and 9 of the PDA. He had informed senior officials about his intentions, there was no evidence that they had objected. The applicants had established that the second applicant had a "clear right" to a final interdict. He had no alternative remedy; the application had to succeed. The respondents were accordingly interdicted from imposing any disciplinary sanction against the second applicant

27

SACTWU obo Ramafoko / Bader SA (Pty) Ltd [2007] (CCMA)

The employer had charged, in a disciplinary hearing, an employee with sabotage of a safety device or the deliberate misuse of company property, as well as making false reports to a company representative about the results of (safety) test.

The facts related to a test required to be done by the company, to assess certain health risks associated with its operation. The employer alleged that the employee had deliberately manipulated the test so that a high risk was revealed. It instituted disciplinary action and dismissed the employee.

The latter referred a dispute to the CCMA, alleging that his dismissal was substantively unfair.

It was held that the evidence satisfied the arbitrator that the employee had indeed sabotaged the test. The dismissal was therefore fair, and the case dismissed.

The employer could have contacted DoL as it is a crime in terms of section 38(1)(n) for any person to tamper with safety equipment or even section 38(1)(p) for a person to wilfully or recklessly does anything at a workplace or in connection with the use of plant or machinery which threatens the safety or health of any person.

It could have been a nice test case but my guess is that it would have gone nowhere if DoL was involved.

28

NUM & others v Chrober Slate (Pty) Ltd [2007] (LC)

In terms of section 23 of the Mine Health & Safety (MHS) Act workers have the right to leave a dangerous workplace. Employers are required to establish procedures for the exercise of this right and the resolution of problems arising from workers exercising this right. By implication workers enjoy the same right in section 14(c) of the OHS Act. Section 34 of the NOH&S draft Bill envisages to provide workers with this explicit right along the lines of the MHS Act. Can the exercising of this right be tantamount to a strike? The onus is on NUM to prove this fact. They allege that the quarry was unsafe hence they withdrew their labour. He who alleges must prove. The following facts militate strongly against the fact that the working place was unsafe:

1. The applicants (stockmen) remained and continued to work in the 'unsafe' working environment. They testified that they were prepared to sacrifice their safety by guarding the slates they had excavated. Surely if the place was that unsafe one would expect them not to remain in the quarry for a period of about 14 days.
2. The issue of unsafe working conditions was raised for the first time in the pre-trial conference. This can only lead to one conclusion. The safety issue was truly an afterthought.

29

NUM & others v Chrober Slate (Pty) Ltd [2007] (LC)

Accordingly no evidence has been presented to substantiate the fact that the quarry was unsafe. The court is not in a position to find that the quarry was indeed unsafe. On the contrary, there are sufficient factors referred to earlier which suggest that the quarry was indeed safe.

If it was not, then the stockmen could have evacuated the quarry from day one of unsafe conditions. The court found that section 23 of the MHS Act did not apply and that it could therefore not be used as an excuse to strike.

30

Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Rieck [2007] (SCA)

During an armed robbery at appellant's business premises, the Mrs Rieck (respondent), an employee of the appellant, was taken hostage by the robbers when making their getaway. The respondent alleged that the appellant's security personnel had fired shots at the getaway vehicle, and that one of those shots had hit her in the elbow.

Alleging that the security staff had acted negligently, and that the appellant was vicariously liable for those actions, respondent successfully sued appellant for damages. The grounds of negligence were that the security staff was aware that respondent was in the getaway vehicle, and must have realised that she could be injured if they shot at the getaway vehicle. The present appeal was noted against the trial court's findings.

The court ruled that the trial court was correct in its findings on the issue of negligence and the appellant's vicarious liability.

31

Crown Chickens (Pty) Ltd t/a Rocklands Poultry v Rieck [2007] (SCA)

The only remaining issue was whether the claim against the appellant was excluded by section 35(1) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, which provides that no action shall lie by an employee for the recovery of damages in respect of any occupational injury resulting in the disablement of such employee against such employee's employer.

The appellant relied on this section to claim protection against a claim such as the respondent's.

However, the court noted that the respondent was in fact employed by a labour broker who contracted her services out to the appellant.

Thus the appellant could not claim indemnity under section 35 and the appeal was dismissed.

32

Rauff v Standard Bank Properties a division of the Standard Bank of SA Ltd & another [2002] (W)

Ms Rauff (Plaintiff) was in the employ of Standard bank ("defendant"), a division of Stannic. Her office suite was on the 7th floor of a building with a basement and 8 floors. The building was fully occupied. There were other tenants besides Stannic or defendant, the owner of the building in Jorissen Street.

The incident happened just after the end of her working day at 16h30 on a Friday afternoon while on her way home. She had left the office suite in which she was employed and had passed through glass doors to the passage at three lifts alongside which was the stairway. The lift which plaintiff used went up to the 8th floor where it became stuck before it suddenly fell to the 6th floor. In the process she was injured.

The court was tasked only to determine the applicability of section 35 of the Compensation for Occupational Diseases Act 61 of 1997. In terms of section 35 of the Act plaintiff will have no claim against defendant as her employer if the relevant event constituted an "occupational injury". That depends on whether the accident which is under discussion was "an accident arising out of and in the course of an employee's employment".

See the definition of "accident" in section 1.

It is clear that personal injury resulted from the accident.

33

Rauff v Standard Bank Properties a division of the Standard Bank of SA Ltd & another [2002] (W)

I focus on determining what relationship there was between the accident and the activity which the employee would be expected to do or not to do as a matter of executing the contract of employment.

It is of necessity factually related to know whether the accident was indeed "arising out of" the employment or was unrelated to what the tasks of the employee entailed.

The second leg is whether the accident was adequately integrated with the "course of . . . employment".

It is on that rather common sense basis that it seems an obvious statement to say that the accident happened just after plaintiff for the particular day no longer had any relationship with her duties as employee.

Vis-à-vis the employer and in her own mind plaintiff had become a free agent on a par with anyone who is not an employee. She could move slower or faster and by any means or route of her choice – all things in which the employer had no direct interest. There was no evidence about plaintiff's contract of employment or any term obliging plaintiff to use a lift or the passage.

34

Rauff v Standard Bank Properties a division of the Standard Bank of SA Ltd & another [2002] (W)

The question is whether plaintiff was within the sphere of her employment while going home and not whether she was still on a site of which the employer is the owner, or whether the public had access.

It follows that the matter can not be determined along defendant's line of reasoning which seems to entail that as long as plaintiff had not yet reached the street downstairs, she was not yet a member of the public and therefore something different and therefore she was there still qua employee.

And whatever happens "arises out of" that involvement. The image which I reject is that employment sticks to the employee like a giant toffee until the general public is able to bump into plaintiff. That would ignore the need to look at the duties as employee and to ask in what sense the accident arose out of employment. In legal terms plaintiff was not in breach of a contractually arising duty if she had used the stairway.

35

Rauff v Standard Bank Properties a division of the Standard Bank of SA Ltd & another [2002] (W)

Secondly, plaintiff was in the same relationship to her daily task as would have been the case if Stannic's doors had led to a public street.

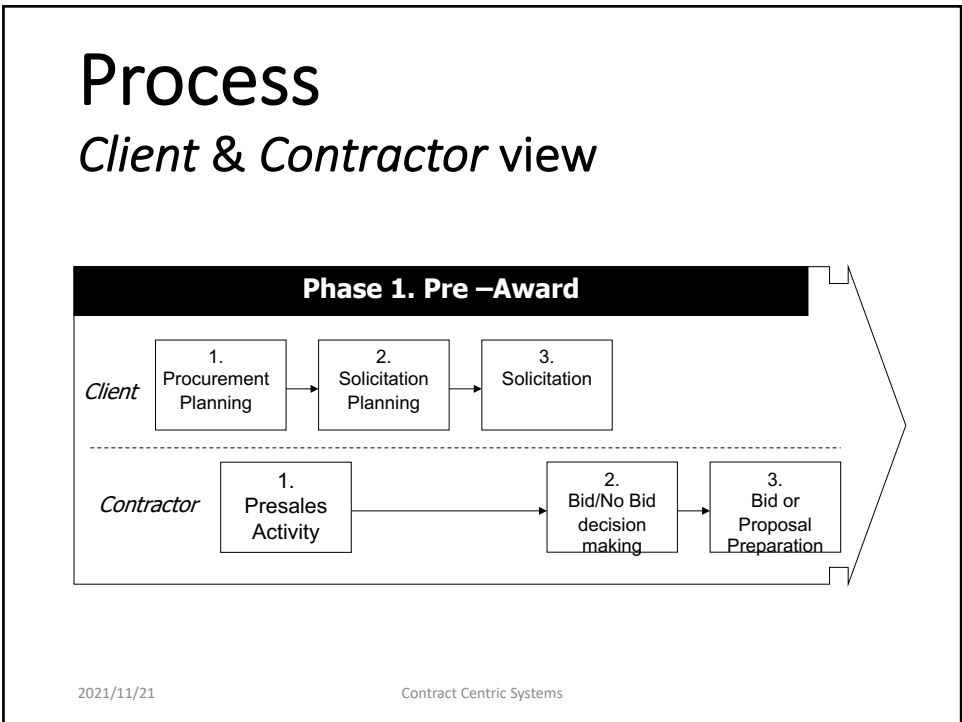
It is true that if plaintiff had not been employed in her specific capacity, she would not have been on the specific premises on the specific day just after 16h30. It is true that if she went home a minute earlier or a minute later she would perhaps not have been in the one lift which malfunctioned. The question, again inaccurately stated for the purposes of simplification, is rather whether she was in the course of going about what her employer expected from her in her capacity as employee. In this case she had already terminated her working day, her day's involvement in doing what she was paid for (beyond merely turning up for work and staying there until permitted to leave).

The finding is made that the incident to which the action relates was not an accident as intended by section 35

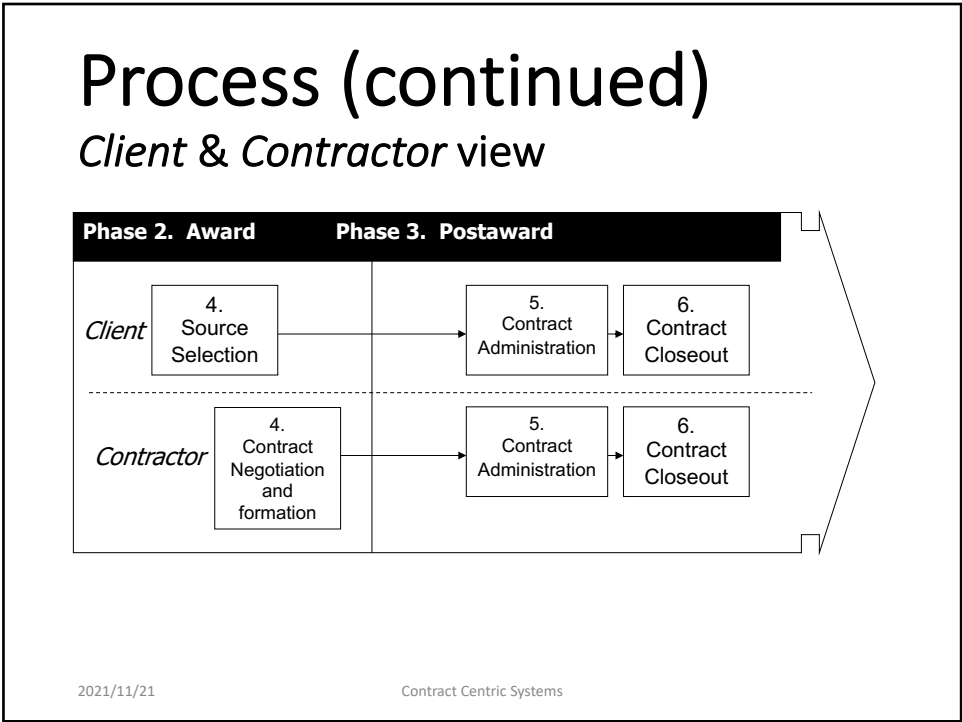
36

Contracting
Lifecycle

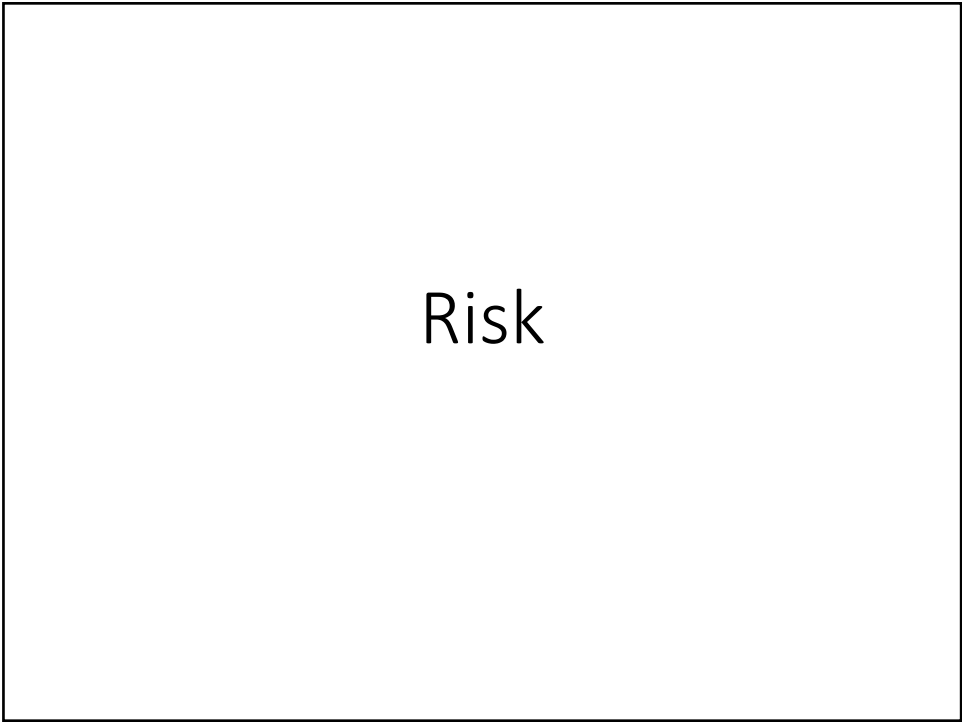
37



38



39



40

Sources of Risk

- Environment
- People
 - Under Contract
 - Consensual Contracts Employees Agents
 - Consultants & Professionals
 - Reciprocal Contracts
 - Purchase & Sale
 - Works
 - Not under contract
- The triple constraint

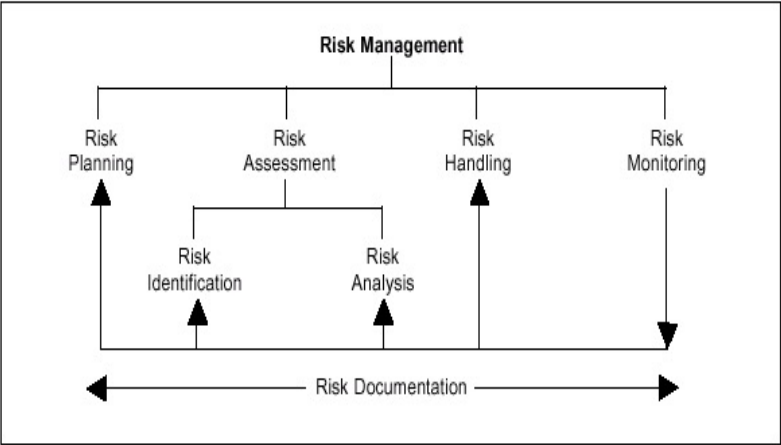


2021/11/21

Contract Centric Systems

41

The Risk Management Process Model



2021/11/21

Contract Centric Systems

42

Contract Risk Management

Risk is a measure of the potential inability to achieve goal or objective within defined cost schedule and technical constraints

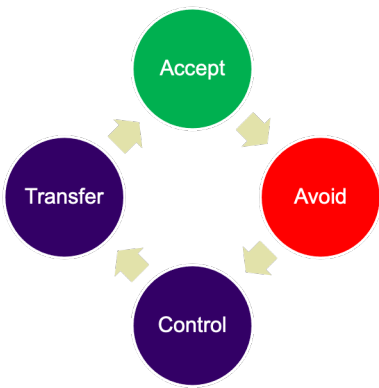
...and has two components

- 1. Probability (likelihood) of failing to meet an outcome
- 2. Impact (consequences) of failing to meet that outcome

Likelihood	e	M	M	H	H	H
	d	L	M	M	H	H
	c	L	L	M	M	H
	b	L	L	L	M	M
	a	L	L	L	L	M
		a	b	c	d	e
		Consequence				

43


Handling Risk



44

7. What is a Risk Assessment / HIRA

TASK: Crossing a road



ELEMENTS

"**hazard**" a source of or exposure to danger;

"**risk**" the probability that injury or damage will occur;

"**controls**" steps taken to ensure safe work;

VEHICLES

High risk

INJURY / DEATH

- Continuous risk assessment.
- Engineering controls.
- Signs
- SWP

45

Method Statement and Risk Assessment / HIRA



Method statement:
Painting of house

Tools
equipment
Chemicals

Steps in
logical
order

Use of
tools and
equipment

Employee
responsible

Are Task and steps
specific to the site
requirement

Training and competency for all
tasks / equipment / material

HIRA

Hazards

Risk

Risk
Rating

Controls

46

8 Safety 101 Methodstatment and HIRA Lesson 8

Method Statement and Risk Assessment / HIRA



TASK: Painting of house

Method Statement:

Tools & Equipment

Chemicals:

Paint:

Cleaning chemicals

Drip sheet

Stepladder

Scaffolding

Steps

1. Prepare wall for painting by sanding.

2. Place drip sheet to minimise environmental spills

3. Decant paint into painting trays on drip sheet.

4. Store paint in well ventilated area and away from any ignition source as per the MSDS

5. Painting house by use of ladder.

6. Painting house by use of scaffolding

7. Clean spills as they happen.

Closeout

Never clean paint brush and rollers on client premises.

47

Slide - [Slide]

File View Format File Records Help

ONSEQUENCE are to be considered sample values only. Details and values need to be updated to suit each project.

Project:

Select for printing ?

Yes

No

Manual Index Number

ZOOM In

ZOOM Out

RAW RISK vs. REDUCED RISK

Raw risk: The risk likelihood and consequence before the controls are in place

Reduced risk: The ratings once controls and preventive measures are in place

Likelihood

Likelihood

A Almost certain

B Very likely

C Likely

D Unlikely

E Very unlikely

Consequence

Consequence

1 Superficial

2 Minor

3 Moderate

4 Major

5 Catastrophic

Risk Rating

L Low

M Medium risk

H High risk

VH Very high risk

END

DOWN

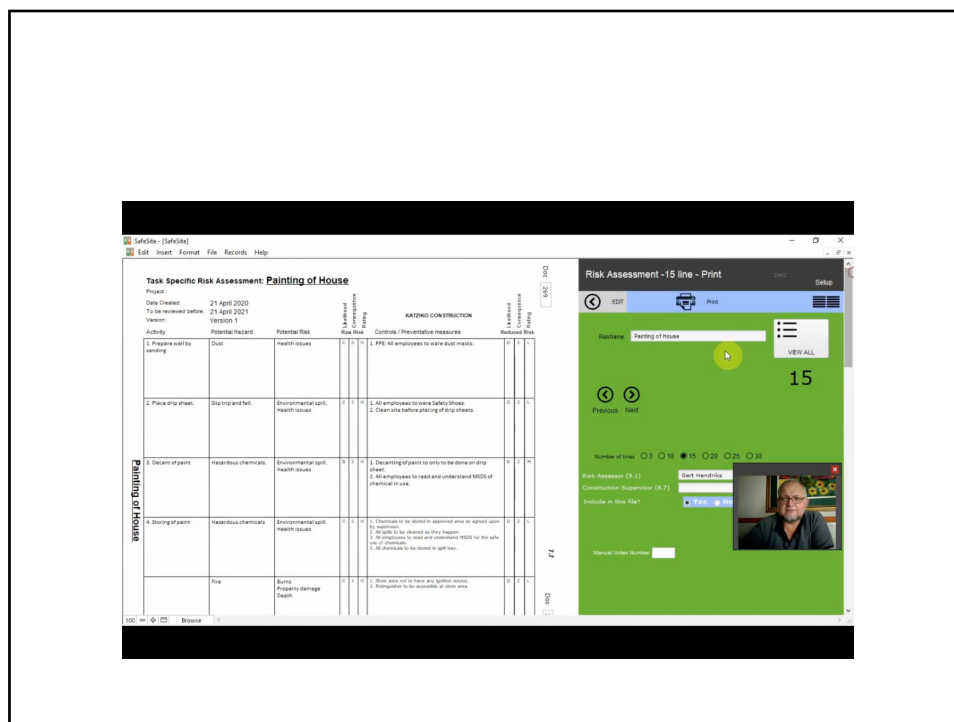
UP

TOP

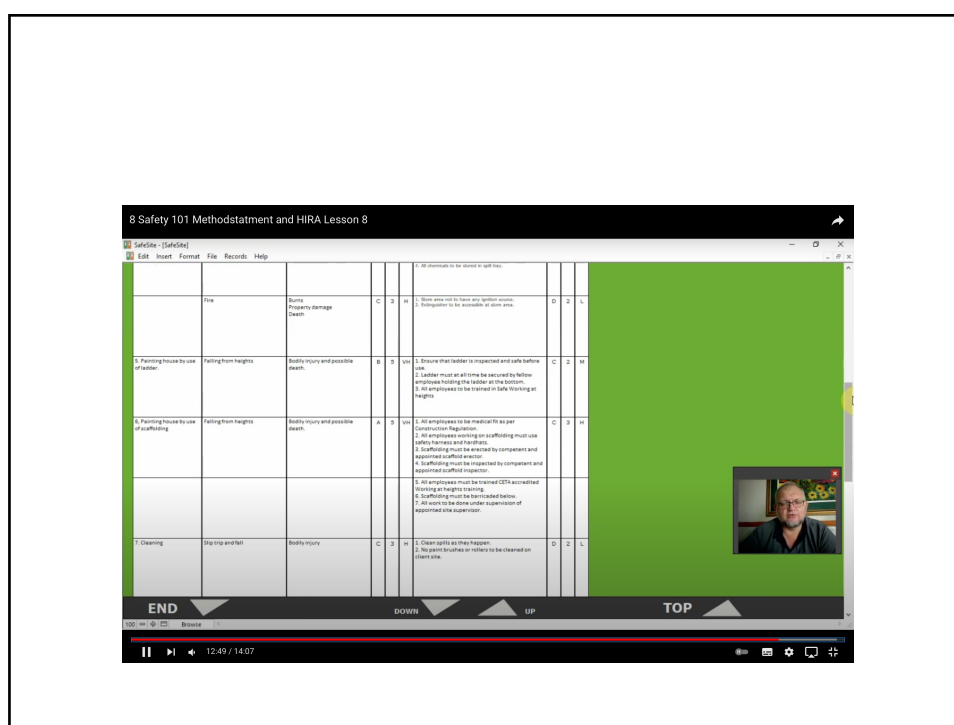
48

(c) GC Weiman

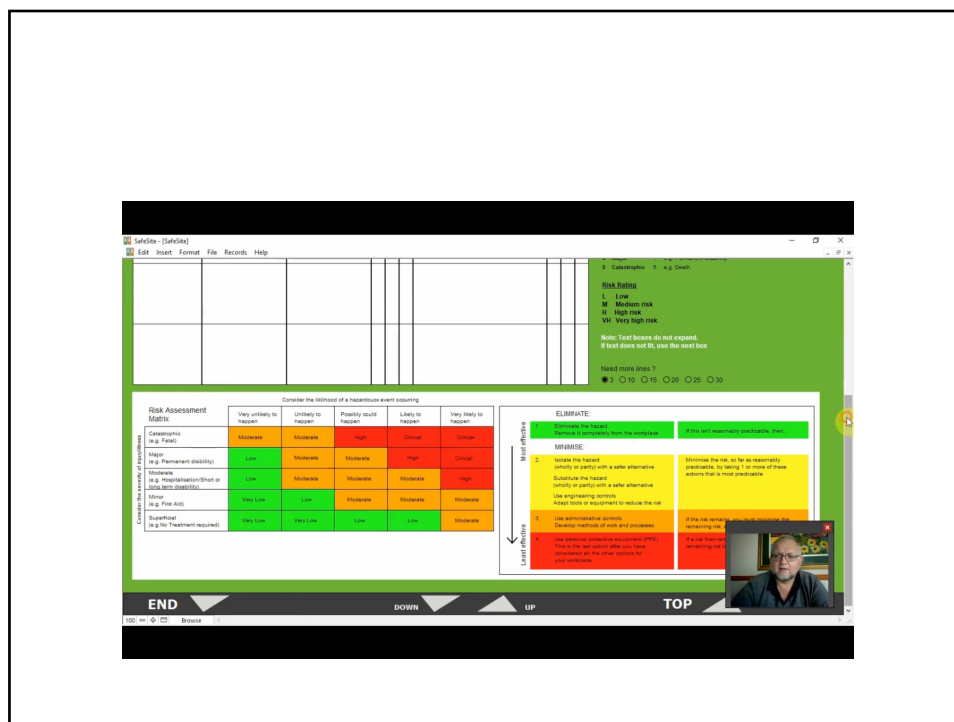
24



49



50



51

Overview

52

Safety 101 - OHS Act Overview (Lesson 1)

labour
Department of Labour
REPUBLIC OF SOUTH AFRICA

Understanding the OHS act

EMPLOYER (left) and **EMPLOYEES** (right) are connected by a central **OHS act 85 of 1993** banner. The banner is divided into **HEALTH** (top) and **SAFETY** (bottom). Arrows indicate the flow of information and reporting: **Duty to INFORM** (top) and **Duty to REPORT** (bottom).

OHS sec 16,1 CEO
OHS sec 7 Safety policy
OHS sec 8 Duties of employers
OHS sec 24 Report of incidents
OHS sec 37 Mandatories
OHS sec 38 Offences, penalties

OHS sec 17 HS Representatives
OHS sec 18 Functions of HS Rep
OHS sec 19 HS committees
OHS sec 20 Function / HS committees
OHS sec 14 Duties of employees
OHS sec 13 Duty to inform

INCIDENT (starburst icon)

FTS Safety GROUP

5:50 / 7:03

53

Safety 101 - OHS Act Overview (Lesson 1)

The Employer

Key elements to understand the OHS act

1 OHS sec 16,1 / 16,2 Duties of CEO / Manager
2 OHS sec 7 Health and safety policy
3 OHS sec 8 General duties of employers to their employees
4 OHS sec 24: Report to inspector regarding certain incidents
5 OHS sec 37 Acts or omissions by employees or mandataries
6 OHS sec 38 Offences, penalties and special orders of court

HEALTH (top) and **SAFETY** (bottom) are connected by a central **OHS act 85 of 1993** banner.

FTS Safety GROUP

2:44 / 7:03

54

Safety 101 - OHS Act Overview (Lesson 1)

The Employee

Key elements to understand the OHS act

HEALTH

OHS act
85 of 1993

SAFETY

OHS sec 17. Health and safety representatives1

OHS sec 18. Functions of health and safety representatives2

OHS sec 19. Health and safety committees3

OHS sec 20. Functions of health and safety committees4

OHS sec 14 General duties of employees at work5

OHS sec 13 Duty to inform6

FTS Safety GROUP

3:40 / 7:03

55

HEALTH

OHS act
85 of 1993

SAFETY

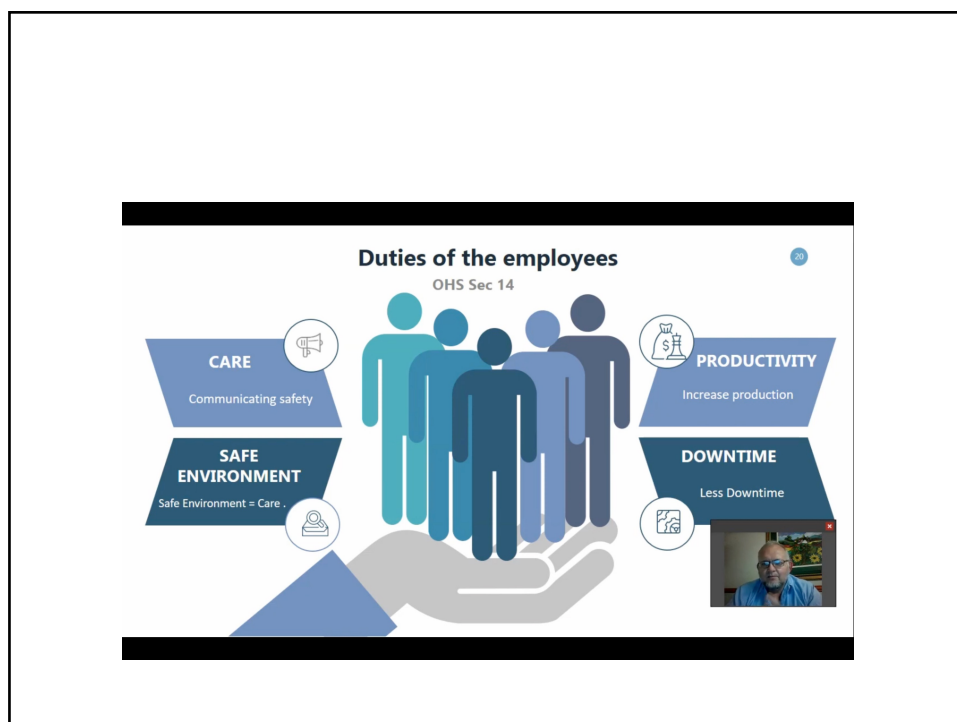
EMPLOYER

EMPLOYEES

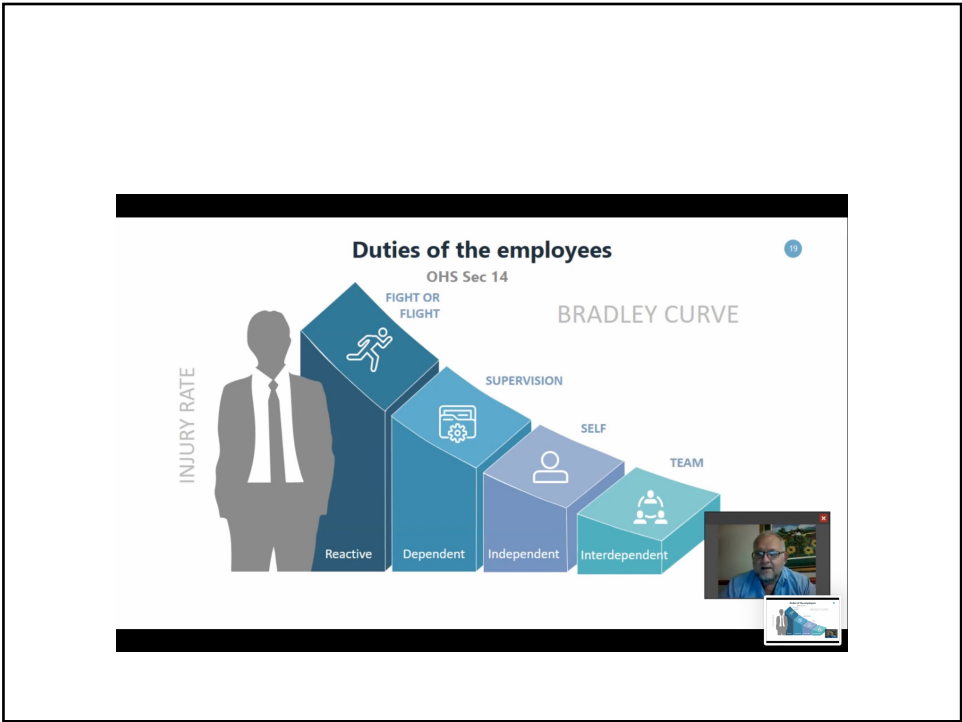
56



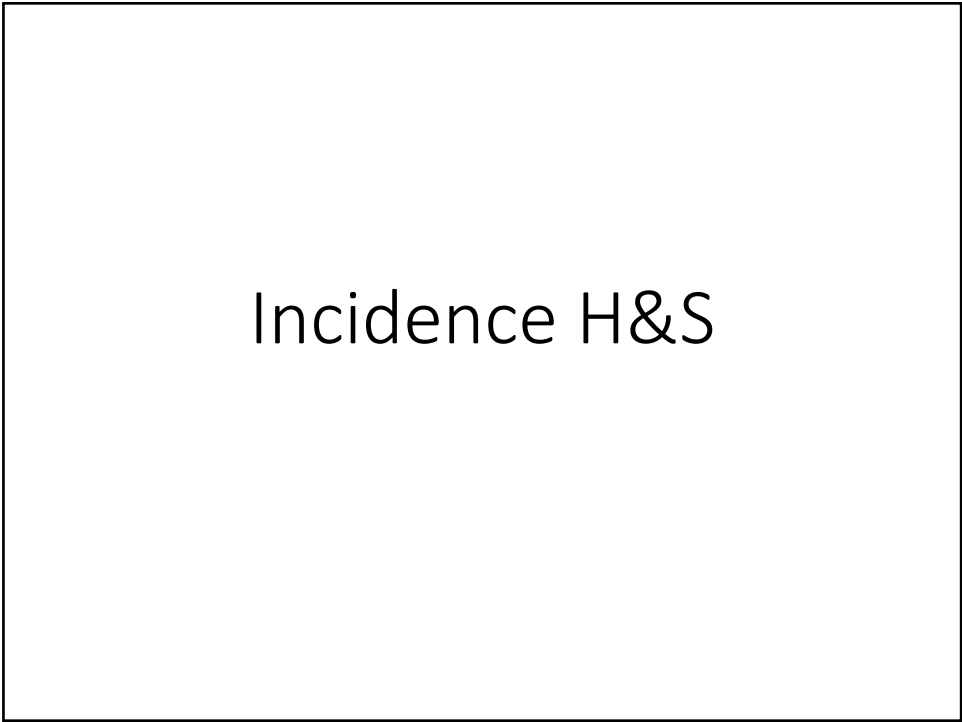
57



58



59



60

Incidents ILO

Global H&S performance of construction sector:

- 60 000 fatal accidents - one every ten minutes;
- one in every six work-related fatal accidents occurs on a construction site;
- in industrialized countries, more than 25% to 40% of work-related deaths occur on construction sites despite the sector only employing between 6% to 10% of total employment;
- about 30% of construction workers suffer from back pains or other musculoskeletal disorders; and
- there is a 50% higher incidence rate for non-fatal accidents among workers aged 15 to 24 years.

61

Incidents DOL

- *"The South African construction industry needs a 'shift in mindset' to become more health and safety conscious - and improve a situation where at least two workers die in site accidents every week".*
- Phumudzo Maphaha, Manager of Construction Health & Safety within the National Department of Labour

Construction H&S Statistics Excluding Motorvehicle Accidents				
Department of Labour: OH&S				
	2004/05	2005/06	2006/07	2007/08
Fatal	54	81	79	162
Non-fatal	159	250	245	396
Non-casualty	11	7	10	20
Total	224	338	334	578

Source: Department of Labour

62

Incidents FEMA

Construction H&S Claims and Fatalities: FEMA

Province	2006		2007	
	Number of Claims	Number of Fatalities	Number of Claims	Number of Fatalities
Gauteng	4 257	32	5 143	30
KwaZulu-Natal	1 207	13	1 311	10
Eastern Cape	943	7	929	7
Boland	1 577	12	1 629	6
Western Cape	827	3	814	1
Kimberly & Northern Cape	28	0	43	0
Free State	345	7	362	6
SA	9 184	74	10 231	60

H&S Accidents by Cause: FEMA

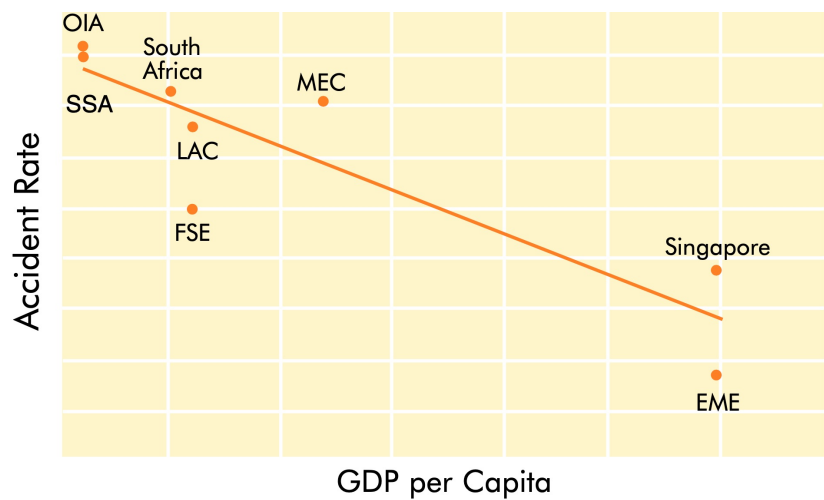
Description	2006		2007	
	Number of Claims	Number of Fatalities	Number of Claims	Number of Fatalities
Accident type N.E.C	43	1	95	3
Striking against	788	1	975	0
Struck by	4 031	17	4 474	10
Caught in, on, between	872	4	877	4
Fall onto same level	200	0	516	1
Fall onto different levels	1 254	18	1 406	10
Slip or over-exertion	1 131	1	683	0
Contact with temperature extremes	89	1	92	0
Inhalation, absorption, ingestion	80	3	199	4
Contact with electrical current	14	1	36	0
Unclassified / Not sufficient data	31	0	21	0
Motor vehicle accident	651	27	857	28
SA	9 184	74	10 231	60

63

Compliance

64

Comparison SA & developed countries



After: Hamalainen et al., 2006

65

52,5% of construction employers non-compliant

National Construction Blitz Inspection Report: August 2007

	Total Work Places Inspected	Number complying	Number non-complying	Improvements	Contraventions	Prohibition
Eastern Cape	136	24	102	0	106	14
Free State	155	271	84	2	77	5
Gauteng: North	57	21	35	8	40	2
Gauteng: South	247	80	167	25	172	163
KwaZulu-Natal	240	126	100	7	100	3
Limpopo	75	7	68	5	57	12
Mpumalanga	237	152	85	9	50	48
North West	56	22	32	5	27	23
Northern Cape	105	19	86	9	71	13
Western Cape	107	37	70	16	315	4
Total	1 415	759	829	86	1 015	287
%	100	47,5%	52,5%	6%	73%	21%

Source: Department of Labour, 2007

66

Institutions

67

Health & Safety Inspectors

Construction Safety Chaos

- The Building, Construction and Allied Workers Union (BCAWU) has fingered the labour department's failure to provide a sufficient number of health and safety inspectors as one of the reasons behind the growing number of accidents on construction sites.
- "... the department of labour is not cooperative in terms of giving us statistics of cases that are under their investigation."
- Labour department spokesperson Sekgothadi Lerotholi refused to provide City Press Gauteng with statistics or reports into construction site accidents.

City Press 09/08/2008

68

Stakeholders on effectiveness of the DoL OH&S Inspectorate:

OH&S Consultants:

- Under-staffed, very little skills, untrained, little authority, and little knowledge.
- The Regional office has become totally ineffective due to all the expertise having left.
- More reactive than proactive.
- Skills, knowledge and competency non-existent.

Designers:

- DoL have no idea of what dangers can be encountered on a construction site. They do not identify a real danger staring them in the face.
- Inspectorate is non-existent.
- Hopelessly understaffed and not enough resources.
- They don't contact us, neither do we.

Source: Geminiani and Smallwood, 2006

69

Study into effectiveness of DoL Inspectorate

The inspectorate is perceived to...

- make use of marginally appropriate checklists;
- be lacking in competencies;
- visit sites infrequently;
- visit a small percentage of sites;
- be poor in terms of liaison and promotion;
- be poor in terms of morale, motivation and job satisfaction;
- be ineffective in terms of enforcing legislation;
- not contributing to an improvement in H&S;
- be ineffective in terms of assuring H&S;
- be insignificant in terms of accident prevention; and
- ineffective in terms of conducting its duties.

Source - Geminiani, F.L. and Smallwood, J.J. 2006. Contractors' perceptions of the effectiveness of the Department of Labour Inspectorate

70

Notable accident reports delayed/ not been published by the DoL:

- Pretoria North slab collapse, 1996;
- Investec scaffold collapse, 1997;
- Kokstad prison crane accident, 1999;
- Bridge collapse, N1 highway, Pretoria bypass, 2002;
- Northpark 2002 Centre structure collapse, Pretoria,
- Randburg Mall scaffold collapse, Johannesburg, 2002;
- Coega, Port Elizabeth, bridge support-work collapse, 2003; and
- Oodmead, Johannesburg, ready-mix concrete truck accident, 2007.

71

Impact

- The Construction Regulations are perceived to have had a wide spread impact, and in particular increased H&S awareness and increased consideration by project managers, and general contractors

Degree of Importance of Various Project Parameters to Respondents' Organisations

Parameter	ACPM		ASAQS		SAACE		SAIA		Contractors		Mean	
	Mean score	Rank	Mean score	Rank	Mean score	Rank	Mean score	Rank	Mean score	Rank	Mean score	Rank
Project cost	4,63	2	4,74	1	4,42	2	4,39	2	4,89	1=	4,61	1
Project quality	4,37	3	4,15	3	4,64	1	4,64	1	4,78	3	4,52	2
Project time	4,68	1	4,41	2	4,29	3	4,25	3	4,89	1=	4,50	3
Project H&S	3,95	4	3,65	4	3,97	4	3,43	5	3,33	4	3,87	4
Environment	3,42	5	3,32	5	3,76	5	4,01	4	3,56	5	3,61	5

Source: Smallwood and Haupt, 2006

72

Standard Form Contrtacts

- GCC - General Conditions of Contract (GCC) for Construction Works as published by the South African Institution of Civil Engineering;
- FIDIC - Red Book, Yellow Book, Silver Book, Green Book
- JBCC series 2000 Principal Building Agreement (6.2) or Minor Works Agreement
- ICE - NEC4 Suite: ECC4, ECSC4 PSC4 TSC4 Institution of Civil Engineers.
- make reference the governing law and laws impacting on construction H&S.

73

Problems summary

- An understanding of construction H&S is hampered by a lack of available statistics, and in particular that from the Compensation Commissioner.
- Statistics for 1999 showed that the construction industry accounts for around the third highest number of fatalities per 100 000 workers, and the ninth highest number of permanent disabilities per 100 000 workers.

74

Problems summary

- The fatality rate in the construction industry is around 20 per 100 000 workers, or around 150 fatalities per year excluding construction related motor-vehicle accidents.
- Motor-vehicle accidents account for around another 100 fatalities per year.

75

Problems summary

- There is a high rate of non-compliance with the requirements of the Construction Regulations with around 50% of construction sites found to be non-compliant in the August 2007 'blitzes'.
- H&S in the construction industry in South Africa lags significantly behind that in developed countries.
- The construction industry currently has the third highest prevalence of HIV positive workers, and the industry faces increasing lost workdays due to absenteeism and productivity decreases, together with skills shortages, and increased costs of construction due to rising overheads.

76

Problems summary

- The CoA is estimated to be around 5% of the value of construction costs which ultimately is passed onto clients.
- Inadequate or the lack of H&S negatively affects other project parameters i.e. productivity, quality and cost.
- The total CoA exceeds the cost of H&S, and therefore, H&S is in essence a profit center.

77