

31 July 2021

Department of Employment and Labour
Tibor Szana
Chief Inspector OHS
Communicated electronically to: tibor.szana@labour.gov.za

Dear Mr Szana

CAIA comments on the Occupational Health and Safety Amendment Bill

INTRODUCTION

The Chemical and Allied Industries' Association (CAIA) represents the interests of a large proportion of the chemical industry in South Africa, throughout its value chain. The chemical sector contributes about 5.0% to the Gross Domestic Product and 22% to manufacturing that occurs in South Africa, thereby contributing strongly to our economy. Economic growth increases the demand for products of the chemical industry, and this growth in turn drives product innovation. The contribution that the sector is making to the economy is falling due to, amongst other factors, the increasing cost of doing business in South Africa that includes the increasing imposition of regulatory and economic instruments.

CAIA is the custodian of the global Responsible Care[®] Initiative that was launched in South Africa in 1994. Through this initiative, companies make a formal public commitment to continually improve their safety, health, security and environmental performance.

The importance of a healthy, sustainable, and growing chemical sector is key to many economies of the world. This is due to the upstream and downstream opportunities which are offered that are reflected in:

- the diversity and complexity of operations that the chemical industry is directly involved in; and
- the strong multiplier effects the chemical industry has on employment and Gross Domestic Product. In South Africa, these multiplier effects are 12.00x and 4.72x, respectively.

CAIA wishes to thank the Department for taking part in the Webinar engagement that was hosted by CAIA on the Occupational Health and Safety Amendment Bill, on 5 July 2021. The Webinar was well attended by CAIA members and was useful in outlining the substantive changes that are being proposed by the Department. Taken together with the Profile of Occupational Health and Safety South Africa Report that was launched yesterday, CAIA foresees numerous engagements in the near future as subordinate legislation is proposed for amendment following the development of the policy and strategy. There is no doubt that the engagements will be fruitful, with agreements paving the way forward for aligned approaches while where there are debates it is trusted they are of a robust and fruitful nature.

COMMENTS

The table below represents CAIA's submission that has been informed by input from its members to date. Please note the additional attachment from the Omnia Group for information as it differs in some areas from the CAIA submission.

Section of the Bill	Comment	Rationale
<p>Definition</p> <p><i>ji)</i> by the substitution for the definition of "listed work" of the following definition: "listed work means any work (declared to be listed work under section 11) which poses a risk to health and safety which requires specific precautionary measures to be implemented;"</p>	<p>Specific "listed work" has not been declared/gazetted thus far. This needs to be specified.</p>	<p>"Listed work" may be open to interpretation. At this point most activities in a plant area may pose a risk to health and safety and would require specific precautionary measures to be implemented. To avoid this, a specified list should be included in an annexure in the Act or listed by the Minister as a separate Notice in the Gazette.</p>
<p>Section 12</p> <p>12. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) <u>(a) An employer shall conduct a risk assessment in relation to such listed work and develop and implement a risk management plan in respect of the risks identified for that work.</u></p> <p>12. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) <u>(a) An employer shall conduct a risk assessment in relation to such listed work and develop and implement a risk management plan in respect of the risks identified for that work.</u> <u>(b) A risk assessment conducted for that workplace, shall be conducted by a person or persons who are competent to pronounce</u></p>	<p>A risk-based approach should be employed. All activities are currently assessed for risk and are categorised as low, medium or high risk. This hierarchy should still be incorporated in the assessment. Competency must be specific, or guidance must be provided as a minimum. Communication of the relevant components of the risk management</p>	<p>Although the Department has indicated that competency is not going to be specified, there must be at least guidance provided (the qualification/experience/CHIETA training that is required to compile the risk assessment).</p> <p>Relevance of risk management plan communication should be considered in terms of the risk to employees and should be activity and function based – e.g., a financial clerk may not be effected by a high-risk plan.</p> <p>Qualification/experience and the need of a Risk Specialist needs attention – currently operational risk assessments are conducted by SHERQ and operational personnel who may have some risk training and experience but may not be recognised as qualified risk specialists.</p> <p>It is important to take note that many SHERQ practitioners are trained in techniques such as HAZOP, Bowtie, Baseline Risk Assessment, What-if Analysis etc. Requiring a Risk Specialist will add resource constraints to the current operational risk assessment processes</p>

<p>on all the risks associated with that work and where the risk is complex in nature, a risk assessment shall be conducted by specialists who are competent to pronounce on all the risks associated with that particular work.</p> <p>(c) <u>The employer shall ensure that a workplace specific risk management plan is in place and is available at the workplace when requested by an inspector.</u></p> <p>(d) <u>An employer may not permit any listed work to be undertaken unless the control measures contained in the risk management plan are complied with. "</u></p>	<p>plan to every employee.</p>	
<p>Section 13</p> <p>13. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:</p> <p>(a) <u>[as far as is reasonably practicable, cause] ensure that every employee [to be made] is conversant with the [hazards] risks to his or her health and safety attached to—</u></p> <p>(i) any work which [he] that employee has to perform;</p> <p>(ii) any article or substance which he or she has to produce, process, use, handle, store or transport; and</p> <p>(iii) any plant or machinery which he or she is required or permitted to use.</p> <p>as well as with the precautionary measures which should be taken and observed with respect to those hazards;</p>	<p>The removal of hazards is a concern – it should be retained.</p>	<p>Every employee should be conversant with the hazards and risks and not only the risks.</p> <p>As identification of hazards is the first step in Risk Management, it implies that hazards which are not identified would not go through the rigour of the Risk Management process, leading to the non-identification of preventive measures for implementation and communication to prevent harm in the workplace.</p> <p>Given the fundamental principle that risk = hazard x exposure, by identifying risk it could also be considered that hazard is automatically identified albeit not expressly communicated as such, but rather the focus being placed on risk.</p>

<p>The intention of the interpretation of the proposed amendment should be clarified so that industry implements with the appropriate focus.</p>	
<p>It is very rare that the Chief Executive Officer develops and implements the health and safety management system, especially in large corporates. This responsibility usually falls under the 16.2 appointment.</p> <p>It is however agreed that the CEO must participate in continuous reviews of the health and safety management system.</p>	<p>Recommended to change to "The Chief Executive Officer shall ensure the health and safety management plan is developed, implemented. The Chief Executive Officer shall oversee the continual reviews of the health and safety management system as the employer may be directed in terms of section 7(1)"</p>
<p>For large corporates, there is a Group under which there are several divisions below in the structure.</p> <p>The CEO is at Group level, and it would not make practical sense for the CEO to appoint just one level of 16.2 responsibility. Making provision for a second or further 16.2</p>	<p>Change "person "to "person or persons" under his or her control.</p>
<p>Section 15</p> <p><u>"(1A) The chief executive officer shall develop, implement and continuously review the health and safety management system as the employer may be directed in terms of section 7(1)."</u></p>	
<p>Section 16</p>	

<p>(2) Without derogating from his <u>or her</u> responsibility or liability in terms of subsection (1) and (1A), a chief executive officer may <u>[assign] in writing, delegate</u> any duty contemplated in the said <u>[subsection] subsections</u>, to any person under his <u>or her</u> control, which person shall act subject to the control and direction of the chief executive officer, <u>in the interest of occupational health and safety</u>.”</p>		<p>appointments will ensure that there is adequate management responsibility and accountability.</p>
<p>Section 24</p> <p>(b) <u>[a major incident occurred;]</u> <u>in the course of an employee's employment, an incident occurred which resulted in personal injury, illness or death of the employee; or</u></p>	<p>“personal injury “is now included. “major incident” has been removed.</p>	<p>This needs to be clearly defined as personal injury indicates all injuries which includes first aid injuries.</p> <p>CAIA suggests that a definition is provided as there is exceptional liability associated with the clause. Downstream consequences may include insurance-related consequences.</p>
<p>(5) (a) <u>..... The employer or user or self-employed person shall provide the Department with a copy of incident statistics annually, on the first day of March of each year.</u></p>	<p>1st of March – for the preceding calendar year? The reporting period needs to be clearly defined.</p>	<p>A guideline for the reporting format needs to be provided.</p> <p>The submission of both company and contractor statistics - the same contractors are also “governed” by OHS act – is this not going to cause double counting as the contractors will also submit.</p> <p>However, it depends on how the data is to be used and further explanation of this intention could provide the necessary comfort.</p> <p>It is recommended that the deadline of 31 March applies to the submission of data for the previous calendar year.</p>

It is also recommended that this submission be made through an online facility to ensure that there is a record of submission and acknowledgement of receipt is provided.

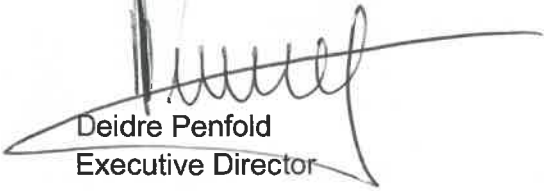
General Comments

The word "illness" is stated numerous times. This word should be replaced by "occupational ill-health" and aligned to ISO 45001 – "Occupational Illness would also be acceptable.

CONCLUSION

CAIA submits these comments as preliminary input for the purpose of engagement and response and looks forward to acknowledgement of receipt and the way forward.

Yours sincerely



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Executive Director