

28 July 2022

Department of Mineral Resources and Energy
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Attention: Ms Stella Mamogafe Representations@dmre.gov.za

Comments - Draft Mine Health and Safety Amendment Bill 2022

Please find attached hereto comments, reservations, and proposals by the Saioosh Technical Committee (TC) on the draft Mine Health & Safety Amendment Bill 2022. ('draft Bill'). The Saioosh TC is of the view that in some instances the draft Bill has been drafted in isolation without adequate cognisance inter alia, of accepted common law principles and section 33 of the Bill of Rights to the Constitution as entrenched in Promotion of Administrative Justice Act 3 of 2002. (PAJA). For example, instructions issued in terms of sections 50 and 54 of the Mine Health & Safety Act, are Administrative Actions as defined in PAJA and subject to section 6 of PAJA which requires objective reasonable conduct by 'administrators' or inspectors. Any provision in the Bill pertaining to Administrative Actions that is repugnant with PAJA is constitutionally precarious. The deliberate selective omission of the internationally accepted norm of balancing employers' duties with 'reasonable practicability' will not be entertained by the courts who have already pronounced on the matter. The common law principle of 'Lex non cogit ad impossibilia', which is aligned to 'reasonability and practicability', has been endorsed by the Constitutional Court in 2021 and will be the ultimate yardstick against which employers are judged irrespective of the provisions in the Act pertaining to employer duties. In addition, both the Supreme Court of Appeal and the Constitutional Court regard any attempt to introduce strict liability as a 'repugnancy' in our jurisprudence.

Reintroducing statutory or corporate homicide is superfluous as the common law crime of culpable homicide applies to companies as well as natural persons in the event of a workplace fatality. This was not the case, for example, in the UK where a statutory crime of Corporate Manslaughter was introduced to cure this shortcoming. In conclusion it is only the Constitutional Court that has a mandate to amend, expand, or endorse the common law.

Kind regards,



Neels Nortjé
Chief Executive Officer