



South African Institute of
Occupational Safety and Health

Rights of Employers

'The Ball is in your Court'

Presented by Adv. Raynard Looch

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www.klasslooch.com

- OHS Act. Section 38. Offences, penalties
- OHS Act. Section 30. Special powers of inspectors
- Section 29 Functions of inspectors
- The Construction Work Permit (CWP)
- DEL Guidelines to the Construction Regulations
- Construction Regulation 5. Duties of Client / DEL (IES) Code of Conduct
- The Constitution. Section 33 of the Bill of Rights 'Just Administrative Action'
- Promotion of Administrative Justice Act No. 3 of 2000 (PAJA)
- Judicial Review / Urgent Interdicts / Case Studies



- ***The Profile of Occupational Health and Safety South Africa. A project commissioned jointly by the ILO and the DEL.***
- ***OHS Strategy 2024 – 2029 Route to Zero Injuries and Diseases.***

'Employers perceive OSH and inspections in particular, as punitive and not as a way to support their business and sustainability. A view was expressed that employers fear Inspectors and the inspection process. They understand that the Inspectors' main purpose is to close down their businesses and implementation of OSH legislation is mainly driven by fear.'

Recommendations.

Improve relationships between inspectorate and employers. We need more open communication. OSH profession to transition to empowerment rather than to police. **Inspectors to transition to be able to assist and to make companies see them as of a partner.'**



Enforcement and sanctions are indispensable components of any labour inspection system, but they should be adequately combined with prevention policies, aimed at helping employers and workers to avoid or eliminate the risk of occupational accidents and diseases.

<https://www.ilo.org/topics/safety-and-health-work/occupational-safety-and-health-inspection>

BLITZ INSPECTION

Deputy Minister Jomo Sibiya, MP will spearhead a Multidisciplinary High Impact Blitz Inspection in Limpopo Province to ensure compliance with different Labour Laws of the Republic of South Africa.



Friday, 17 April 2026



Limpopo Province

#Yazini



Department of
Employment and Labour



@deptoflabour



employmentandlabour



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

A NATION
THAT WORKS FOR ALL



Should the Executive Branch of Government (cabinet) be involved in inspections? Critics suggest that top-level political involvement turns a regulatory compliance check into a **political spectacle** rather than an objective investigation, potentially complicating legal proceedings later. *(While the day-to-day statutory inspections are carried out by officially designated and certified DEL inspectors, having Cabinet leadership present highlights the national priority of labour compliance and worker safety).*

www.labour.gov.za

Criminal charges laid against Members of Parliament for crimen injuria. On 4 February 2026, DEL released a statement saying it was a joint inter-department team visit to the farm. It said the visit included people from the Inspection and Enforcement Services and the Portfolio Committee on Employment and Labour. A group of approximately 50 unidentified individuals arrived at the property in ten SUVs.



*'The MPs, **who arrived unannounced**, demanded entry to the private property **and did not comply with safety or foot-and-mouth disease protocols**. (Disinfection Foot Baths etc. Humans can act as "vectors" by physically carrying the virus on their bodies, clothes, or shoes). The CEO described the group's visit to his farm as a hostile **inspection intended for social media** likes rather than for actual legal compliance. **He added that the inspectors found no actual violations but issued a prohibition notice for media optics**'.*

External officials cannot rely on the unannounced entry powers of a DEL inspector. Only a formally appointed statutory labour inspector holds the strict legal mandate to cross property thresholds without a warrant. An external official can only join the **walkthrough** if the inspector **explicitly co-opts them as an expert witness, or if the employer gives consent**. Parliamentary legal advisors (such as Adv. Frank Jenkins) have explicitly briefed committees that MPs do not have the powers to access private homes or the premises of private companies.

www.parliament.gov.za

The Prohibition Notice served on the Normandien Farms sawmill was issued by the DEL to halt dangerous work activities and temporarily shut down operations.

Inspectors issued the directive for several OHS non-compliances, including:

- Workers being exposed to dust without appropriate Personal Protective Equipment (PPE).
- Workers consuming meals in a dusty environment.
- The failure to provide hygienic ablution facilities and adequate dining spaces.

‘The closure followed a joint oversight visit to the Newcastle site by the Parliamentary Portfolio Committee on Employment and Labour, the SAPS, and other departments. Normandien Farms stated they later laid criminal charges against officials over the manner in which the inspection was conducted’. DEL.



The joint oversight team, which included the Portfolio Committee on Employment and Labour, DEL, the Department of Home Affairs, **COSATU**, and **armed police**.

An internal or recognised union representative can lawfully participate in a DEL inspection, but **external union officials generally cannot** unless explicitly permitted by the inspector or agreed upon by the employer. labourguide.co.za **Under the ILO framework, labour inspections are conducted by qualified technical experts, not political executives.**
www.ilo.org

A Parliamentary Portfolio Committee **does not have the legal authority to arrive at a private business residence.** While these committees have broad constitutional oversight powers to monitor state organs and public administration, they do not possess the statutory right of entry, inspection, or search without notice for private entities. www.parliament.gov.za

Key distinctions limit their ability to conduct these visits:



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

- Private vs. Public Premises:** Committees and individual Members of Parliament (MPs) do not hold the statutory power to access private homes or the premises of private companies uninvited. Their oversight power is primarily directed at the Executive, government departments, and state-owned entities.
- Lack of Inspection Powers:** Unlike specific regulatory officials (such as labour or health inspectors), committee members do not have legal authorisation to bypass regular notice requirements or demand immediate entry to investigate non-compliance.
- Summoning Powers:** If a portfolio committee requires information or wishes to inspect a specific matter, the correct legal procedure is to invite or formally summon individuals to appear before the committee in Parliament, rather than conducting unannounced visits on private property. www.parliament.gov.za

RE: WC/2024/03/CPT829 W2 TURFHALL RD Update of New Construction Manger



Darryl Juta (cpt) <Darryl.Juta@LABOUR.gov.za>

To: Stephan Julius

You forwarded this message on 2026/03/30, 14:56.

This message is high importance.

Labour explaining the reason for change in designer.

- Letter by principal contractor to be addressed to the Department of employment and Labour explaining the reason for change in construction manager and construction health and safety officer.
- Change in construction health and safety manager – advise why in the principal contractor's letter.
- Proof of payment of R450 for extensions and/or amendments.

Hand deliver the above as well as a copy of this trailing email. The administrator(s) will go through the above with you for verification.

Kind regards

Mr. Darryl Juta | Occupational Health and Safety | Principal Inspector | Civil and



Section 29. Functions of inspectors

(1)(h) An inspector **may direct** any employer, employee or user (including any former employer, employee or user **to appear before him at such time and place as may be determined by him** and question such employer, employee or user either alone or in the presence of any other person **on any matter to which this Act relates.**

Section 38. Offences, penalties and special orders of court

(1)(f) **Any person who refuses or fails to comply to the best of his ability with any requirement or request made by an inspector** in the performance of his functions shall be guilty of an offence and on conviction be liable to a fine not exceeding R50 000 or to imprisonment not exceeding one year or to both such fine and such imprisonment

It will be unlawful for a DEL inspector to summon an employer or initiate enforcement actions on a matter that **falls entirely outside the scope of the OHS Act** or other legislation they are mandated to enforce. It is generally lawful for a DEL inspector in to request information not explicitly listed in the OHS Act **provided the request is relevant to assessing health and safety compliance**. Inspectors have broad, legally binding powers under Section 29 of the Act to investigate, monitor, and enforce safety standards which often necessitate gathering information beyond *e.g.* a basic checklist. www.labour.gov.za **If a request for information has no bearing on health and safety compliance or the specific regulations under the OHSA**, it may fall outside the inspector's legal mandate. **Detailed reasons for change in personnel could contravene POPI**. A DEL inspector has the authority to (broadly) request reasons for changes in personnel on a construction site to ensure that only competent, properly trained and legally compliant personnel are working on-site. Changes in personnel, particularly key roles (construction manager, supervisor, safety officer) can impact safety. An inspector must ensure new personnel are competent and trained. Changes in personnel must be updated in the H & S File which the inspector is entitled to review. www.labour.gov.za / www.labourguide.co.za

Section 30. Special powers of inspectors

(1) (a) Whenever an employer performs an act or requires or permits an act to be performed, or proposes to perform an act or to require or permit an act to be performed, **which in the opinion of an inspector threatens or is likely to threaten the safety or health of any person**, the inspector **may by notice in writing prohibit** that employer from continuing or commencing with the performance of that act or from requiring or permitting that act to be continued or commenced with, as the case may be.

(d) **A prohibition imposed may at any time be revoked by an inspector in writing if arrangements to the satisfaction of the inspector have been made to dispose of the threat which gave rise to the imposition of the prohibition. (*Implies access to an inspector. Refusal to see a representative of an employer could be construed as misconduct by an inspector i.t.o DEL (IES) Code of Conduct!*)**

(3) Whenever an inspector is of **opinion that the safety or health of any person** at a workplace or in the course of his employment **is threatened** on account of the refusal or failure of an employer to take reasonable steps in the interest of such person's safety or health, the inspector may by **notice in writing direct that employer to take such steps as are specified in the direction within a specified period.** (**Direction / Improvement Notice**).

(4) Whenever an inspector is of the **opinion that an employer has failed to comply with a provision of a regulation applicable to him,** the inspector may by **written notice** direct that employer to take **within a period specified** in the notice such steps as in the inspector's opinion are necessary to comply with the said provision and as are specified in the direction. (**Contravention Notice**). *A formal appeal lodged in terms of Section 35 of the OHS suspends the operation of a contravention notice.*

(5) A period may at any time be extended by an inspector by notice in writing to the person concerned. (6) An employer shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.

DEL inspectors can only issue a **prohibition notice** under Section 30 of the Occupational Health and Safety (OHS) Act if, in their opinion, there is an immediate, significant, or likely threat to the health or safety of any person. **It is not meant for minor non-compliances.**

Key Aspects of Prohibition Notices in SA:

- **Purpose:** To immediately stop dangerous activities, use of machinery, or access to a building that poses a risk of serious injury or death.
- **Inspector's Opinion:** The Act gives the inspector the discretion to determine if a threat exists (likely to threaten the health or safety).
- **Action Taken:** The inspector may block, bar, or fence off the affected area, plant, or machinery.
- **Immediate Effect:** A prohibition notice takes effect immediately and must be complied with.
- **If there is no actual or likely threat to health and safety, a prohibition notice is technically invalid.** However, if an inspector deems that a situation—even if not immediately fatal—could lead to serious harm, they can issue it. For non-dangerous compliance issues, inspectors typically issue an improvement notice (Section 29?) or contravention notice (Section 30) instead.

Time for DEL to provide a Gazetted Guideline to inspectors on how to objectively assess the dangers posed by employer non-compliance with the OHS Act so that as inspector can impose an instruction that is rational and justifiable?

Issuing a prohibition notice when no actual threat to health or safety exists **would likely be considered irrational and unlawful under SA law.** While Section 30 of OHS Act gives an inspector the power to act based on their "opinion," that opinion must be formed **rationally and objectively and the action proportionate.** (*Ashanti Gold LC*).

Why such a notice is legally vulnerable:

Lack of Rationality: A decision made by a public official must be "rationally related to the purpose for which the power was given". Since the purpose of Section 30 is to stop activities that threaten health or safety, **a notice issued where no such threat exists fails this test.**

Abuse of Discretion: For non-threatening administrative issues (like missing paperwork), inspectors are legally required to use less severe measures, such as a Contravention Notice or Direction, rather than halting operations entirely.

Just Administrative Action: Under Section 33 of the Constitution and PAJA, every person has the right to administrative action that is lawful, reasonable, and procedurally fair.

Your Immediate Legal Recourse:

Written Appeal: You can appeal to the CI under Section 35 of the OHS Act within 60 days. The CI has the power to confirm, set aside, or vary the notice / **PAJA Request.**

Urgent Interdict:

Judicial Review: If the internal appeal fails, you can take the matter to court for a formal review to have the notice declared irrational and set aside.

Section 35. Appeal against decisions of inspectors

(1) **Any person** aggrieved by any decision taken by an inspector under a provision of this Act **may appeal against such decision to the chief inspector**, and the chief inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm, set aside or vary the decision or substitute for such decision any other decision which the inspector in the chief inspector's opinion ought to have taken.

(2) Any person who wishes to appeal shall **within 60 days** after the inspector's decision was made known, lodge such an appeal with the chief inspector in writing, setting out the grounds on which it is made.

(3) Any person aggrieved by a decision taken by the chief inspector or in the exercise of any power under this Act, **may appeal against such decision to the Labour Court**, and the Labour Court shall inquire into and consider the matter forming the subject of the appeal and confirm, set aside or vary the decision or substitute for such decision any

If an administrator or DEL inspector refuses to entertain verbal representations, a complaint can be lodged with the Public Service Commission (PSC) regarding the conduct of the official. www.gov.za / www.psc.co.za /

www.parliament.gov.za

Facilities Regulation 8. Seats

Every employer shall -

(a) where reasonably practicable, provide an ergonomically sound seat for every employee whose work can be effectively performed while sitting;

(b) where reasonably practicable, permit an employee whose work is normally performed standing to take advantage of any opportunity for sitting which may occur, and for this purpose the employer shall provide seating facilities; and

(c) provide seats with backrests where the nature of work performed by the employees is such that such seats can be used.



Truworths versus the Chief Inspector (First respondent) DEL (Second Respondent) Labour Court 2025

Inspectors directed the employer to provide seating at cashier desks, claiming non-compliance with Facilities Regulation 8(b), without considering whether it was **reasonably practicable** for the employer to do so. The Court emphasised that inspectors must objectively assess whether the employer's arrangements are reasonably practicable, considering factors like workplace layout, operational needs, and alternative seating arrangements. The employer had provided seating elsewhere and the Court found this met the regulation's requirements. **Inspectors cannot impose their preferences or ignore practical constraints.**

The chief inspector rejected the employer's appeal, arguing the employer failed to prove it was not reasonably practicable to provide seating at the cash desks. The Court clarified that the onus is not on the employer to prove non-practicability. Instead, inspectors must objectively evaluate the employer's measures and only issue directions if **statutory criteria** are not met. The chief inspector refused the appeal based on irrelevant considerations (**such as requiring a risk assessment for standing employees**), **which was not a regulatory requirement**). The Court held that decisions must be based on relevant statutory criteria and supported by sufficient reasons. **Irrelevant or unsubstantiated grounds cannot justify enforcement actions.**

'We have submitted a copy of our **Risk Assessment specific to the staircase** relating to the OHSA incident reported last year to the DEL this morning as per Subpoena served on us. However, they advised that this document was not sufficient **as they require a generic document for the entire employer network.** *(SA multi-nation company with 50,451 people globally. 49000 in SA & 650 branches in SA).* **This document should include all areas of the business and it is required to be signed by all employees as confirmation of awareness (regarding staircases) as well as any contractors & visitors to the premises.** They've granted us an extension to produce this document. They further advised that this document **should be approved or signed off by our CEO'. This requirement by DEL would be construed as unlawful in view of the Truworths case as there is no requirement for risk assessments specific to staircases!**

General Safety Regulation 13H, housekeeping.

An employer shall keep all floors, walkways, **stairs**, passages and gangways in a good state of repair, skid-free and free of obstructions, waste or materials.

In SA the design **and safety** of staircases are governed by the National Building Regulations & Building Standards Act. Compliance with this Act is detailed through the SANS 10400 building codes, specifically Part M (Stairways) and Part T (Fire Protection).



employment & labour

Department: Employment and Labour
REPUBLIC OF SOUTH AFRICA

EMAIL ADDRESS: DARRYL.JUTA@LABOUR.CO.VA.ZA

Telephone: 082 796 3578

Enquiries: MR. DARRYL G. JUTA

Ref. No: WC/2023/07/CPT 736
(WIND FARM)

THE CEO
[REDACTED]
[REDACTED]
SPE: FARM 155, BAKKENS RIVER
(RE 155), WIND FARM



Date of Inspection: 03/03/2026
Accompanied by: MR. HARRY WINNIE

DIRECTION NOTICE: PROHIBITION

OCCUPATIONAL HEALTH AND SAFETY ACT, ACT 85 OF 1993 AS AMENDED

I am of the opinion that the circumstances specified below threaten, or are likely to threaten, the health and/or safety of persons. In terms of section 30 of the aforesaid Act, I hereby prohibit you from continuing or commencing with the following, effective immediately:

CONSTRUCTION ACTIVITIES AT SITE: FARM 155, BAKKENS RIVER
WIND FARM. CONSTRUCTION WORK PERMIT NO LONGER
VALID - EXPECTED COMPLETION DATE FEBRUARY 2026.

I will consider revoking or amending this prohibition notice only after arrangements to my satisfaction have been made to dispose of or substantially reduce the threat which gave rise to the imposition of this prohibition.

Note: An Appeal in terms of section 35 will not suspend this notice

Inspector: [Signature] Date: 03/03/2026 RECEIVED BY: [Signature] (Mr. Winnie)
Employer Representative:

REVOCACTION OF A PROHIBITION NOTICE

In terms of section 30 (1) of the aforesaid Act, the prohibition notice served on you on is hereby revoked.

UK. Regulation 6(3)(c) of the Construction (Design and Management) Regulations 2015 (CDM 2015) specifies that a project notification (F10 form) provided to the HSE must, if necessary, **be periodically updated** to remain compliant. The regulations do not contain a specific "prohibition" clause triggered solely by an expired notification.

G.P.-S. 06/16 MAN 793

employment & labour
Department
Employment and Labour
REPUBLIC OF SOUTH AFRICA

Telephone: 082 796 5395
Enquiries: MTHANDO NKUZO
THE CHIEF EXECUTIVE OFFICER
TRI STAR CONSTRUCTION
23 LOWRER LANGE STREET
CAPE TOWN

Ref. No: 800
DEPT. OF EMPLOYMENT AND LABOUR
10 APR 2026
Office stamp
CAPE TOWN PROVINCIAL OFFICE

Date of inspection: 10 APRIL 2026
Accompanied by: MR WILLIAM WIEBENBERG

DIRECTION NOTICE: PROHIBITION
OCCUPATIONAL HEALTH AND SAFETY ACT, ACT 85 OF 1993 AS AMENDED

I am of the opinion that the circumstances specified below threaten, or are likely to threaten, the health and/or safety of persons.
In terms of section 30 of the aforesaid Act, I hereby prohibit you from continuing or commencing with the following, effective immediately:

I HEREBY PROHIBIT ALL CONSTRUCTION WORK AT
23 LOWRER LANGE STREET DUE TO THE FACT THAT
CONSTRUCTION WORK SHOULD HAVE BEEN COMPLETED BY NOW
IN TERM OF ORIGINAL WORK PERMIT CONTRACT.

I will consider revoking or amending this prohibition notice only after arrangements to my satisfaction have been made to dispose of or substantially reduce the threat which gave rise to the imposition of this prohibition.

Note: An Appeal in terms of section 35, will not suspend this notice.

Inspector: [Signature] Date: 10/04/2026 Employer Representative: [Signature] (10H46)

REVOCATION OF A PROHIBITION NOTICE
In terms of section 30 (1) of the aforesaid Act, the prohibition notice served on you on _____ is hereby revoked.

Inspector: _____ Date: _____

F10 Form can be updated on-line to avoid HSE action. While you can appeal any Health and Safety Executive (HSE) notice through an Employment Tribunal, a Prohibition Notice is typically reserved for activities involving a **"risk of serious personal injury"**. An administrative failure like an expired F10 notification usually results in an Improvement Notice (IN) or a Notice of Contravention (NoC) **rather than an immediate work stoppage.**

SA. Under PAJA an administrator cannot unilaterally, arbitrarily, or secretly change the interpretation of a regulation if that change adversely affects the rights of any person. PAJA requires that any decision-making process—including interpretation that leads to action—must be lawful, reasonable, and procedurally fair. **Inconsistent enforcement** of regulatory standards is generally considered irrational and unlawful in terms of the PAJA. www.justice.gov.za

CR 3. Application for Construction Work Permit (CWP)

(1) A client who intends to have construction work carried out, must at least 30 days before that work is to be carried out apply to the provincial director in writing for a CWP to perform construction work if the intended construction work will -

(a) exceed 180 days / will involve more than 1800 person days of construction work / the works contract is of a value equal to or exceeding thirteen million rand or CIDB grading level 6.

(2) An application must be done in a form similar to Annexure 1.

(3) The provincial director must issue a CWP in writing to perform construction work within 30 days of receiving the CWP application and must assign a site-specific number for each construction site.

(5) A CWP may be granted only if -

(a) the fully completed documents contemplated in regulation 5. -

(6) A client must ensure that the PC keeps a copy of the CWP in the OHS file for inspection by an inspector, the client, the client's authorised agent, or an employee.

(7) No construction work may be commenced or carried out before the CWP and number have been issued and assigned.

ANNEXURE 1

APPLICATION FOR A PERMIT TO DO CONSTRUCTION WORK

[In terms of Regulation 3(2) of Construction Regulations, 2014]

This application must be submitted with the following documents:

1. Health and Safety specification.
2. Health and Safety plan.
3. Baseline risk assessment.

1. Name, postal address and telephone numbers of the client:

2. Details of the Agent.

a. Title, Surname and Initials. _____

b. Identity number/ Passport Number _____

c. Registration number with SACPCMP _____

d. Office Tel. number and/or Mobile number _ _ _ _ _

–

e. Postal address. _____

3. Name, postal address and telephone numbers of the appointed principal contractor:

4. Name, postal address and telephone numbers of designer of the project:

5. Name, postal address and telephone numbers of the following persons:

a. Construction Manager:

b. Construction Health and Safety Manager:

If a form or annexure requires only an 'expected' or an "estimated" date, it is typically viewed as an indication of intent rather than a strict, binding deadline. An "expected" date acts as a target, not a strict legal deadline. While it creates an expectation of performance, it does not carry the same legal weight as a stipulated completion date (in a contract).



c. Construction Health and Safety Officer:

6. Exact physical address of the construction and site office:

7. Nature of construction work:

8. Expected commencement date:

9. Expected completion date:

10. Estimated maximum number of persons on the construction site:

11. Planned number of contractors on site accountable to principal contractor:

12. Name(s) of contractors appointed:

13. _____
Signature of Client/Client's Agent

14. _____
Signature of the Principal Contractor

The Approval is subject to the following conditions:

- There is full compliance with the Occupational Health and Safety Act and Construction Regulations
- This permit is only valid for the above-mentioned construction site and it is not transferable.
- The site-specific number must be conspicuously displayed at the main entrance.
- **This permit may be withdrawn or suspended should there exist unsafe conditions and or acts which are likely to threaten the health and or safety of any person who may be affected by work conducted on site.**

Hernina Elizabeth (Lizeri) Serfontein
Rabie Property Development (Pty) Ltd
4th Floor, Anex , 2 Energy Lane
Bridgeways Precinct
Century City
Cape Town
Western Cape
South Africa

Attention: Ms L Serfontein

Contact number: 071 253 2233/ 021 550 7000

OCCUPATIONAL HEALTH AND SAFETY ACT, 85 OF 1993 CONSTRUCTION REGULATION 3:
APPLICATION FOR A CONSTRUCTION WORK PERMIT CR 3(1)

Your application dated 01 August 2025 refers.
Approval in terms of Construction Regulations 3(3),

Permit to perform Construction work is hereby granted at:

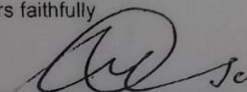
Rabie Property Development (Pty) Ltd
45 and 37 Bridgeways
Century City
Cape Town
7441

With the site specific number being: WC/2025/09/CPT 1065

The approval is subject to the following conditions:

1. There is full compliance with the Occupational Health and Safety Act and Construction Regulation
2. This permit is only valid for the above mentioned construction site and it is not transferable.
3. The site specific number must be conspicuously displayed at the main entrance.
4. This permit may be withdrawn or suspended should there exist unsafe conditions and or acts which and or Safety of any person who may be affected by work conducted on site.

Yours faithfully



Construction Regulation 5. Duties of Client

(1) A client must -

- prepare a baseline RA / prepare a site specific H & S Spec for the intended construction work based on the baseline RA / include the H & S Spec in the tender documents;
- ensure that potential PCs submitting tenders have made adequate provision for the cost of H & S measures / ensure that the PC has the necessary competencies and resources to carry out the construction work safely;
- take reasonable steps to ensure co-operation between all contractors appointed by the client to enable each of those contractors to comply with these Regulations;
- ensure before any work commences on a site that every PC contractor is registered and in good standing / appoint every PC in writing for the project or part thereof on the construction site;
- provide the designer with the H & S Spec contemplated in paragraph ensure that the designer takes the prepared H & S Spec into consideration during the design stage / ensure that the designer carries out all responsibilities contemplated in regulation 6.

- discuss and negotiate with the PC the contents of the PC's H S Plan and must thereafter finally approve that plan for implementation / Ensure that a copy of the PC's H & S Plan is available on request to an employee, inspector or contractor / Take reasonable steps to ensure that each contractor's H & S Plan is implemented and maintained / Ensure that periodic H & S audits and document verification are conducted
- ensure that a copy of the H & S audit report is provided to the principal contractor within seven days after the audit / stop any contractor from executing a construction activity which poses a threat to the health and safety of persons / Ensure that the H & S file is kept and maintained by the PC.
- Where a client requires additional work to be performed as a result of a design change or an error in construction due to the actions of the client, the client must ensure that sufficient safety information and appropriate additional resources are available to execute the required work safely.
- **Where a CWP is required the client must appoint a competent person in writing as an agent to act as his or her representative, and where such an appointment is made the duties that are imposed by these Regulations upon a client, apply as far as reasonably practicable to the agent so appointed.**

DEL GUIDELINE TO THE CONSTRUCTION REGULATIONS

- The 30 days required to issue a CWP is on condition that all
- correct and fully completed documents are submitted as per the attached 'list of
- items (not limited to) to be submitted with the CWP application'.

- Where any person aggrieved by any decision taken by an inspector in relation to
- the application of a CWP under a provision of this regulation may appeal against such decision to the chief inspector in terms of Section 35.

- The CWP shall be issued to the Client for whom the construction work is conducted.
- Regulation 5(1)d must be read with regulation 6, the duties of the designer and a written report must be submitted to the Client by the Designer as proof of compliance with the afore said regulation.

- Regulation 5(1)(i) Where there are multiple principle contractors (or contractors) on site appointed by the client , the client shall coordinate cooperation between contractors to ensure health and safety control, read with regulations 7(4). 5 (5); (6) and (7) .

DEL GUIDELINE TO THE CONSTRUCTION REGULATIONS (Cont.)

- Where a client specifies which contractors a principal contractor must appoint the duties as specified in 7(1)(c)(iii) shall be applicable to the said client.
- A client may appoint a Construction Health and Safety Agent or Construction Health and Safety Manager based on the scope and risk profile of construction work to represent him/her on matters of health and safety. Provided that, where the question arises as to whether a Construction Health Safety Agent or a Construction Health and Safety Manager is necessary, the decision of an inspector is decisive.

- **An administrator / DEL is required in terms of PAJA to notify the public and interested parties of formal changes **or new interpretations to regulations** through official channels. While informal opinions are not always broadcast, **any interpretation that has the force of law** or substantively changes regulatory application follows strict (Constitutional) transparency requirements particularly when these changes affect rights, obligations, or compliance requirements. If one DEL (provincial) inspectorate determines a situation is lawful while another considers it unlawful, it can strongly suggest irrationality, **inconsistency**, or administrative unfairness. In *Municipal Manager: Qaukeni Local Municipality and Another v FV General Trading CC* (2010), the court highlighted that when an organ of state acts in a way that is **inconsistent**, the action is unlawful. www.justice.gov.za*

DEL (IES) Code of Conduct

- A labour inspector shall act with integrity and promote professionalism in his or her conduct when performing his or her duty. Be reliable and knowledgeable and shall act to promote a culture of compliance.
- **A labour inspector shall adhere to Section 33 of the Constitution which promotes fair administrative justice and shall act to promote the object and purport of the Promotion of Administrative Justice Act in that they shall understand that their decision is in an administrative action and therefore reviewable in terms of the said Act.**
- The three components of the IES Client Service, namely Help Desk, Front Line and Back-up Support the "first port of call" for both walk-in clients as well as telephonic inquiries. Because first impressions are lasting impressions, IES officials stationed at this section should:
- Adhere to the Batho Pele principles of the State / Be well-mannered and articulate / Be civil, friendly **and approachable** / Be neutral, fair, flexible and unbiased during investigation but resolute when reaching a decision on a specific case / **Decision should be based solely on the applicable legislation.**

The Constitution.

Section 33 of the Bill of Rights.

Just administrative action.

1. Everyone has the right to **administrative action** that is lawful, reasonable and **procedurally fair**.
2. **Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.**
3. An **administrative action** means **any decision taken**, or any failure to take a decision, by- a) an organ of state, when-
4. i) exercising a power in terms of the Constitution or a provincial constitution; or
5. ii) **exercising a public power or performing a public function in terms of any legislation. (OHS & MHS Acts).**

Promotion of Administrative Justice Act No. 3 of 2000 (PAJA)

PREAMBLE

WHEREAS section 33(1) and (2) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair **and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.**

IN ORDER TO—

- * promote an efficient administration and good governance; and
- * create a culture of **accountability, openness and transparency** in the public administration or in the exercise of a public power or the performance of a public function, **by giving effect to the right to just administrative action.**

How does PAJA impact on DEL?

“Administrator” is defined as an organ of state or any natural or juristic person that takes administrative action.

(i) “administrative action” means any decision taken, or any failure to take a decision, by an organ of state, when exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation. (OHS Act) Investigations / Inquiries (Inspector’s Report) / Prohibition / Contravention Notices / Directives .

Reasons for administrative action.

5. (1) **Any person whose rights have been materially and adversely affected** by administrative action and who has not been given reasons for the action may, **within 90 days** after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, **request that the administrator concerned furnish written reasons for the action.**

The administrator to whom the request is made must, **within 90 days** after receiving the request, give that person **adequate reasons in writing** for the administrative action.

(Administrators must tell you how they reached their decision. **If you have asked questions, these must be answered. Of course, this does not mean that they have to convince you that their decision was correct. (www.justice.gov.za).*

(3) If an administrator fails to furnish **adequate reasons** for an administrative action, it must and in the absence of proof to the contrary, be **presumed** in any proceedings for judicial review that the **administrative action was taken without good reason.**

(4) (a) An administrator may depart from the requirement to furnish adequate reasons if it is reasonable and justifiable in the circumstances and must forthwith inform the person making the request of such departure.

One cannot simply ignore a PAJA just because an administrator fails to respond within 90 days. A failure to provide reasons within the prescribed time is considered a refusal, allowing you to initiate judicial review proceedings. You must officially challenge the decision through court. You can also approach the Public Protector.

<https://www.justice.gov.za/paja/citizen.htm>

Failure to provide reasons is a serious breach of administrative justice. It does not instantly invalidate the decision or trigger a court-led review without further action from the affected party. Instead, **it creates a powerful legal presumption in favour of the requester. Administrators can be punished if they contravene PAJA.** While PAJA primarily focuses on fixing invalid decisions, it provides several mechanisms for holding officials accountable for unlawful, unreasonable, or procedurally unfair actions

Consequences for Administrators:

- **Court-Ordered Compensation:** In "exceptional circumstances," a court can order an administrator or the state to pay compensation to the affected (natural & juristic) person.
- **Invalidation of Decisions:** Actions that do not comply with PAJA can be declared invalid by a court, forcing the administrator to redo the process correctly.
- **Personal Liability: While PAJA generally protects officials from liability for actions taken in "good faith," those who act with malice (vindictiveness), gross negligence, or corrupt intent can face consequences, including potential disciplinary action or civil liability. *Bert's Bricks (Pty) Ltd and Another v Inspector of Mines, North West Region and Others 2011 North West Region***
- **Procedural Orders:** Courts can make orders requiring administrators to pay costs or directing them to act within a specific timeframe.

Notable Cases of Personal Liability

The Judiciary has established that "taxpayers should not carry the costs" for the illegalities of officials who act in bad faith or with gross negligence. Arbitrary/Capricious Action by an administrator i.e. taking action without any rational basis, showing a total lack of concern for the legal framework or consequences.

MEC for Health, Gauteng v Lushaba (2015): In this medical negligence case, the High Court initially ordered specific officials within the DoH and the State Attorney's office to pay 50% of the legal costs personally. The court slammed the "complete indifference" and "inefficiencies" of the officials involved.

Gauteng Gambling Board v MEC for Economic Development (2013): The SCA held that public officials can be personally liable for costs when they act in a "high-handed manner" or show "flagrant disregard of constitutional norms".

Black Sash Trust v Minister of Social Development (2017): While technically a "legality" review rather than a PAJA review, the CC ordered former Minister Bathabile Dlamini to pay 20% of the legal costs from her own pocket due to her role in the social grants crisis.

Courts typically move from state liability to personal liability when an administrator's conduct involves: Bad Faith / Gross Negligence / Ulterior Purpose.

Judicial Review (Filing a judicial review in the High Court usually involves legal fees (attorneys/advocates) and court fees, unless you qualify for legal aid).

One must generally **exhaust all available internal appeals or remedies** before instituting judicial review proceedings in terms of the Promotion of Administrative Justice Act (PAJA), 2000. Section 7(2) of PAJA, which states that no court or tribunal shall review an administrative action unless any **internal remedy is exhausted**.

Key points regarding this requirement:

- **Definition of Internal Remedy:** These are methods of correcting or reviewing administrative decisions within the same department or organisation that made the original decision
- **Purpose:** The goal is to provide immediate, cost-effective relief and allow the administration to fix its own errors without involving the court system.
- **Court Proceedings:** If you skip this step, a court will generally send you back to complete the internal appeal process before they will hear the case.
- **Exception:** A court may exempt you from this requirement in "**exceptional circumstances**" if it is in the interest of justice to do so.
- **Time Limit:** An application for judicial review must be brought within 180 days of the internal appeal being finalised.

Anglogold Ashanti Limited v Mbonambi & others [2016] (LC)

'One ought not to use a sledgehammer to crack a nut'!

The court concluded that there were no objective facts which would lead a reasonable person to believe that damage caused to a single trackless mobile vehicle necessitated the suspension of the operation of all trackless mobile machinery. **Any decision made in terms of section 54 clearly constitutes administrative action for the purposes of the Promotion of Administrative Justice Act (PAJA).** An order or instruction is therefore subject to review under section 6 of **PAJA**. I mention this because the applicant's primary submission in the present application is that the respondents failed correctly to identify dangerous conditions at the mine and respond to them **proportionally**.

Proportionality, of course, is an element of the right to reasonable administrative action established by section 33(1) of the Constitution.

**Under Section 8 of the Constitution, the Bill of Rights applies to juristic persons.
Entitlement to Rights (Section 8(4)): A juristic person is entitled to the rights in the Bill of Rights to the extent required by the nature of the rights and the nature of that juristic person.*

Bert's Bricks (Pty) Ltd and Another v Inspector of Mines, North West Region and Others 2011 North West Region

Safety Stoppages (MHS Act) / Prohibition / Direction / Contravention Notices (OHS Act) / PAJA Administrative Actions

'It seems that not one of the officials properly applied his mind to the operation of the MHS Act and that there was a gross abuse of the provisions of the Act. This is most disturbing. This litigation has resulted in a waste of the state's funds (taxpayers' money) and a waste of the court's time. It is striking that throughout these proceedings the Department's officials have failed to give proper consideration to the applicants' complaints and that they have not deemed it necessary to dispute the applicants' factual allegations. **In such a case the court should order that the responsible officials must bear the costs of the litigation.**

However, the applicants have not sought such an order and it requires no further consideration'. Court dismissed inspectorate's argument that the Brick making operation was a mine and **found that closing the operation costing R913 360.00 / 4 idle days for 300 employees was unlawful. Sadly, taxpayers bore the cost award against DME.**

*The CC has held that claims for **punitive damages** should not be granted for the violation of a constitutional right. The amount of **compensation** awarded should be strictly **limited to the actual harm** caused by the violation of the right to just administrative action.

- The second applicant's brick yard is not a borehole, excavation, or place where minerals are exploited; it is not a 'mine' under the MHSA definition, even considering extended meanings in the MPRDA. (Mineral and Petroleum Resources Development Act).
- The Department's inspectors conducted inspections, **issued notices** and **temporarily closed** the brickyard, **citing unsafe conditions**, despite the fact that the damage to equipment (e.g., forklift tyres) was cosmetic **and posed no safety risk**.

The applicants provided legal opinions and the Terra Bricks judgment, which confirmed that brickyards are not mines under the MHSA, **but inspectors continued to treat the brickyard as a mine**.

Procedural Fairness and Administrative Justice

The respondents failed to file answering affidavits, did not dispute factual allegations, and did not properly consider the applicants' complaints.

The court noted a lack of procedural fairness and proper application of mind by Department officials.

SA court suspends Northam mine safety stoppage. News24

South Africa's Labour Court has suspended a safety stoppage at a mine operated by Northam Platinum in the first corporate legal challenge to a government drive that has cut output in the world's largest platinum producer, a union said. South Africa's department of mineral resources has upped on-site inspections and dramatically increased its issuing of "Section 54s" -- the regulation evoked to temporarily close mining operations for safety violations. **"Northam Platinum brought an application for an urgent interdict in order to have a section 54 order issued to the company's Zondereinde mine declared invalid,"** trade union Solidarity said in a statement. "The Labour Court provisionally ruled in the employer's favour and gave the department until 27 March 2012 to submit replying affidavits," it said. Neither the company nor officials at the department of mineral resources were immediately available for comment. **But a copy of the court order obtained by Reuters says that the Section 54 is "suspended, pending the resolution of this application".** Such a challenge is rare and comes against the backdrop of industry frustration at the safety campaign and the **blanket nature of the stoppages**, which have seen the closure of entire mines. **Safety-related stoppages cost the platinum sector 300 000 ounces last year in lost output -- about 5 percent of global production and worth about \$500-million at current prices.** But the department of mineral resources has said the industry needs a shake-up to cut deaths in the country's mines.

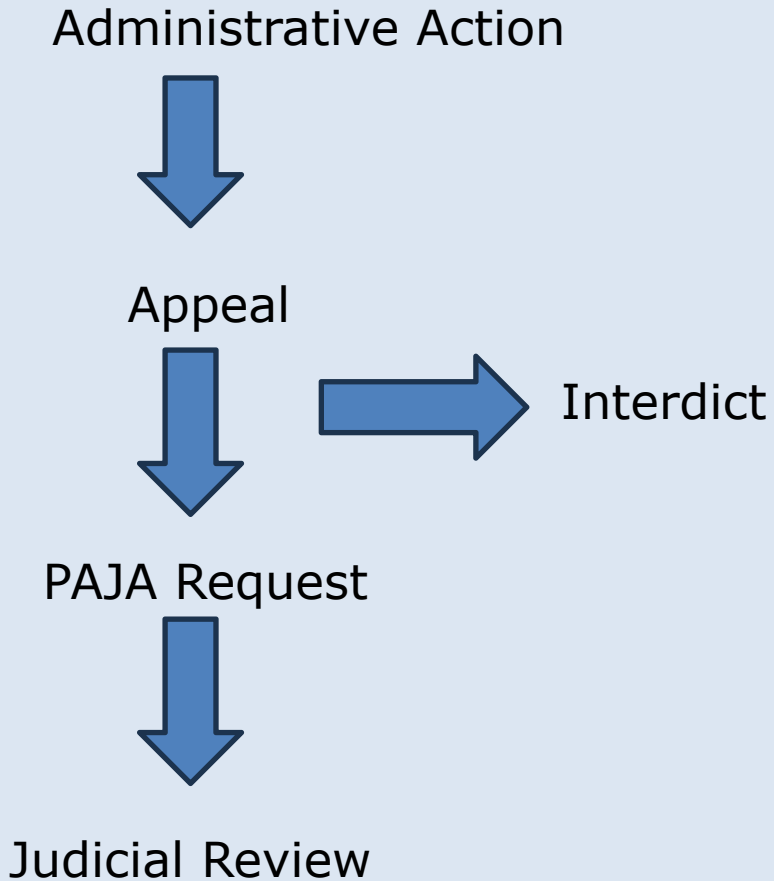
In South African law, one can urgently interdict an administrator if they act irrationally, unreasonably, or unlawfully, provided specific high-threshold requirements are met. Such actions are governed by the Promotion of Administrative Justice Act (PAJA), which requires that administrative decisions be lawful, reasonable, and procedurally fair.

Requirements for an Urgent Interdict

To succeed with an urgent interdict (an interim order) against an administrator, you must prove:

- **A prima facie right:** You must establish a legal right that is being affected, even if it is open to some doubt. (*Constitution Section 22: Freedom of trade, occupation and profession*)
- **Well-grounded apprehension of irreparable harm:** You must show that if the interdict is not granted immediately, you will suffer, or continue to suffer, harm that cannot be fixed later. (*Loss of production*)
- **Balance of convenience:** The harm you will suffer if the interdict is refused must outweigh the harm the administrator will suffer if it is granted.
- **No other satisfactory remedy:** You must prove that there is no other reasonable way to stop the harm (e.g., waiting for a normal court review process is insufficient).
- **Urgency:** You must explain why the matter is urgent and why you could not be afforded substantial redress in due course. (*Appeals take 60 days*)

An internal appeal does not have to be launched before a request for reasons under PAJA. In fact, the DJ & CD and legal experts generally recommend requesting reasons first so that you have the necessary information to decide if an internal appeal is worth pursuing. One can launch an internal appeal and a request for reasons under PAJA simultaneously in one document. The two processes are not mutually exclusive. The internal appeal challenges the *correctness* of the decision, while the PAJA request ensures you are *informed* of the basis for that decision. www.justice.gov.za



A PAJA request for reasons does not typically involve a formal hearing. It is a procedural request for written documentation explaining an administrative decision. The goal is to obtain written evidence to understand why a decision was made, allowing you to determine if it was lawful, reasonable, and procedurally fair. While requesting reasons itself doesn't require a hearing *before* an administrative decision is made, procedural fairness (Section 3 of PAJA) may entitle you to a hearing or an opportunity to make representations.

www.justice.gov.za