

# APPOINTING THE CONSTRUCTION H&S AGENT PN19 & PN 20 (C&A/LIAB/10)

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**APPOINTING A CONSTRUCTION HEALTH AND SAFETY AGENT IN TERMS OF THE CONSTRUCTION REGULATIONS, 2014**

**PRACTICE NOTE - PN19 (C&A/liab/10)**

**STATUS - Current**

**Category:** Clients & Appointments  
**Sub-Category:** Liability Aspects  
**Revised:** October 2020

- (i) **PURPOSE:**  
To draw members' attention to their clients' duty when appointing a Construction Health and Safety Agent to ensure the person is registered as a PrCHSA with the South African Council for the Project and Construction Management Professions (SACPCMP)
- (ii) **KEY WORDS:**  
Construction Regulations, OHS ACT, Department of Labour, Health and Safety Agent, competent person, PrCHSA, SACPCMP, OSE
- (iii) **DISCLAIMER:**  
The contents hereof are published for general information only and are not intended as specific professional advice, legal or otherwise. Every situation should be considered separately and specific professional advice in relation thereto should be sought.

- 1 INTRODUCTION**
- 1.1 The Occupational Health and Safety Act (No. 85 of 1993) and Construction Regulations (2014) refer to the "Client" (without derogating from his/her health and safety responsibilities and liabilities) having an absolute duty to appoint a competent person (in particular a PrCHSA) in writing as agent to act as his or her representative.
- 1.2 This applies if regulation 3 (Application for Construction Work Permits) is determined as part of the Client's project CH&S risk profile.
- 1.3 The competency of this appointed agent is now determined by the South African Council for the Project and Construction Management Professions (SACPCMP), in terms of Section 13(1)(c) of the Project and Construction Management Professions Act, 2000 (Act No. 46 of 2000).
- 2 IMPLICATIONS**
- 2.1 The competency of this appointed agent is now determined by the SACPCMP who have been mandated by the Council for the Built Environment and approved by the Department of Labour to register Construction Health and Safety Professionals in terms of Construction Regulation 5 (7)(b). This includes the disciplines Construction Health and Safety Agent (PrCHSA), Construction Health and Safety Manager (CHSM), and Construction Health and Safety Officer (CHSO).
- 2.2 The SACPCMP have been mandated by the Council for the Built Environment and Department of Labour to only agree and determine scope of services, qualifications and competencies that such



**OCCUPATIONAL HEALTH AND SAFETY ACT, 1993, AND CONSTRUCTION REGULATIONS, 2014**

**PRACTICE NOTE - PN20 (C&A/liab/9)**

**STATUS - Current**

**Category:** Clients & Appointments  
**Sub-Category:** Liability Aspects  
**Revised:** October 2020

- (i) **PURPOSE:**  
To draw members' attention to their obligations and responsibilities as Designer, and as Agent of the Client, in terms of the OHS Act and Construction Regulations.
- (ii) **KEY WORDS:**  
Occupational Health and Safety, OHS ACT, Consultant as Agent, Consultant as Designer, Construction Regulations, Health and Safety Plan.
- (iii) **DISCLAIMER:**  
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agents should have, verify these competencies and then register such professionals accordingly. The Construction Regulations (2014) under the Occupational Health and Safety Act (No.85 of 1993) determines when a PrCHSA must be appointed.

- 2.3 As such these Acts (amongst others) must be read together to ensure that once the CH&S practitioner has been registered as a PrCHSA and thereafter appointed, a consistency of service delivery and competency can then be expected by the client (as defined).

# INTRODUCTION

The revised Construction Regulations (CRs) were published February 2014

A number of changes noted that have catapulted health and safety (H&S) into a different arena

The professionalizing of H&S as part of the construction process

Increased liability and responsibility of all parties (Client, designers and contractors)

The construction work permit system

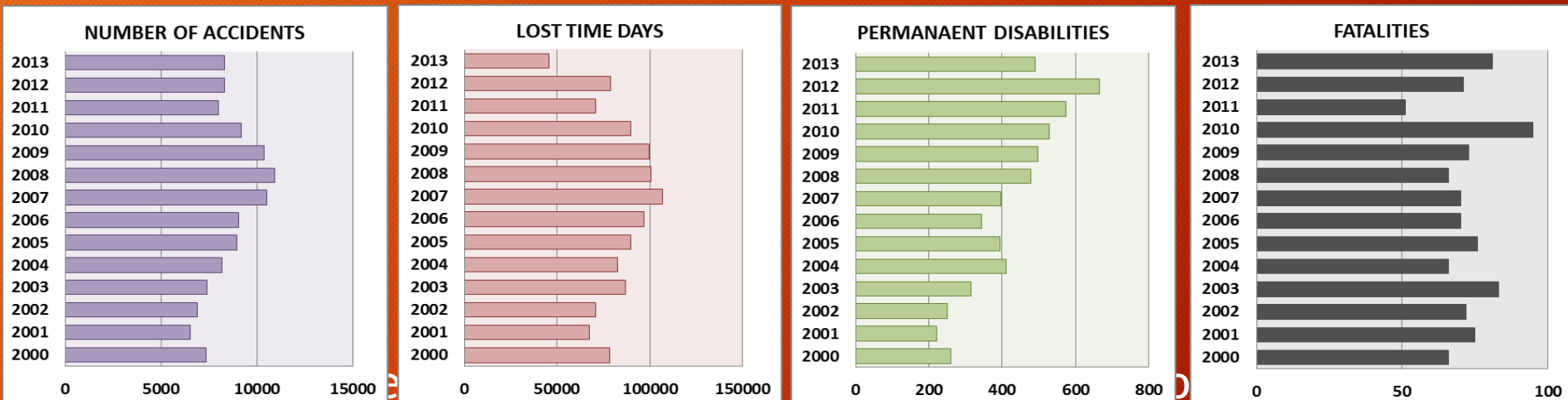
Good evidence indicating hazards and risks can be 'designed out' of projects early in design

CESA guidelines are available to assist Professionals in assuring/ensuring legal and professional compliance

# INTRODUCTION (2) The Spirit of the CRs



- Notable increase the prescriptive nature of the CRs
  - No significant decrease in fatalities, diseases or injuries over last decade SACPCMP (2014)



# Can risks of injury & fatalities be reduced ?



- Investigation across all injuries in industry: 60% - indicates preventative roots in design (HSE, 1995)
- Elements in design, planning, scheduling, material specifications probable contributors to musculo-skeletal injuries (Hecker, Gibbons and Barsotti, 2001)
- 22% of 226 injuries over a 2 year period in 3 US states linked to design, and 42% of 224 fatalities over 13 years linked to design (Behm, 2004)
- 100 construction accidents - 47% could have been reduced if changes had been made in final design stage (Gibb, Haslam, Hide and Gyi, 2007)
- Kinnersley and Roelen (2007) cited aviation and nuclear industries - 50% of all accidents have root causes in design (Musonda and Haupt, 2009)

# Occupational Health and Safety Act & Regulations



- General Administration
- General Safety
- Major Hazard Installations
- Hazardous Biological Agents
- Explosives
- Construction
- Hazardous Work by Children in SA
- Driven Machinery
- Lifts & Escalator
- General Machinery
- Pressure Equipment
- Asbestos Abatement (New rev out)
- Diving
- Environmental (Physical Agents out for comment)
- Facilities
- Hazardous Chemical Agents
- Lead
- Noise Induced Hearing Loss (revised and out for comment)
- **Electrical**
  - Electrical Installations
  - Electrical Machinery

# Liability in design



	<b>Safety Knowledge Implemented</b>	<b>Safety Knowledge Not Implemented</b>
<b>Not Standard Practice</b>	Not Liable	Liable
<b>Standard Practice</b>	Not Liable	Liable

**FIG. 2. Designer Liability for Worker Injuries or Fatalities**

Gambatese, 1998: Journal of Architectural Engineering

# CR (2014) Definitions



- ‘Agent’ is a competent person acting for the client
  - Refer to the exemption notice from DEL re statutory registration, and SACPCMP duties and deliverables of each category
  - Responsibility to ensure the appropriate registered category is used that allows consequence for failure to perform against duties and deliverables
- ‘Competency’ includes being **conversant and knowledgeable** regarding the Occupational Health and Safety Act (OHSA) and Regulations



# Duties of Client affecting the project



- Life cycle approach
- Pricing for H&S
- Competence of construction role players and resources
- Enabling co-operation between parties
- In good standing with the compensation fund
- H&S audits and document verification at least every 30 days, submitted within 7 days
  - Note: legal compliance is not better practice

# The Permit and notifications



- Permit = Client:
  - Annexure 1: within 30 days of commencement
    - G7
    - <180 days or 1800 person days
  - Must submit:
    - Baseline risk assessment
    - H&S Specification
    - H&S plan
- General notification = Principal Contractor:
  - Annexure 2 within 7 days
    - Aspects lower than for Annexure 1:
    - Excavations, heights, demolition, explosives
    - Single storey home where owner will reside

# PrCHSA and H&S Categories: Scope of work



Project Stage	PRACTICE AREAS	
	CHSA	CHSO / CHSM
Stage 1: Project Initiation and Briefing	✓	N/A
Stage 2: Concept and Feasibility	✓	N/A
Stage 3: Design and Development	✓	N/A
Stage 4: Tender Documentation and Procurement	✓	✓
Stage 5: Construction Documentation and Management	✓	✓
Stage 6: Project Close-out	✓	✓

# PrCHSA Overall responsibilities



- Develop the project documentation from Stage 1
- Details defined and Gazetted by the SACPCMP and in the CRs
- CR 5(1)(a&b) requires pre early works that lead into detail design and then procurement, and are required to be updated regularly
- Develop the BoQ (Addendum to P&Gs)
- Advise and amend changes to designs throughout the stages
- Monitor the project to ensure compliance against programme and methodology selected by the contractor

# Issues experienced



- Projects requiring CWP's are often given to CHS Managers, Officers and those unregistered

nepotism when it comes to issuing out the permit, they issue it using one agent he's holding 47 or more permits under his name ,they are sharing money amongst themselves when using this Can agent (who's employed full time ) so this other can agent applied for a permit and it was rejected in September my client found me last week I've signed my 5.5 with public works around 26th of October and public works called My client to replace me with thier guy holding 47 permits otherwise the permit will be rejected twice I have proof of all the communication when public works including recorded calls now my permit came back with some modifications I've modified everything snd sent to labour (still on my 30 days ) now my client was sent a letter of termination while I am awaiting for the feedback of the permit

4:57 am

~~Agent~~, pls could you call me at your earliest convenience regarding a tender submission where we need a registered Agent with at least 3 years post registration experience, Rgds Peter

09:00

Good morning, this is a second request in Three days

09:01

People who are not CHSA's desperately tap into the space. Even when they see they don't meet the requirements

09:02





- CWPs have been issued to projects with details of a PrCHSA (known or unknown to them) and once issued are under the CHS Manager or Officer without knowledge to the PrCHSA - who still carries liability
- BEPs appoint Managers and Officers to do the work of the PrCHSA internally or externally
- Subcontractor relationship between the BEP and PrCHSA leads to payment and ethical issues
- BEPs appointed as the H&S Agent

# Conclusion & Recommendations



- Compliance is important, embedded in legislation
  - Minimal level - not optimum - appointment of key positions
  - Advice to client and BEPs
- Meeting of moral and ethical issues will meet most legal requirements
- Lessons learnt on site - often too late
  - Look to learn about integrating H&S into work, not an add-on
  - Detailed design exclude comments by the PrCHSA
    - Layouts, working levels that would affect employees post construction
    - Lighting, noise and ventilation levels during and post construction
- Limit liability by identifying H&S aspects necessary
  - improve own knowledge and that of the team
  - Legal compliance is not a panacea
  - Inclusive approach - use expertise available as a team member
  - Respect for people

Thank you.....

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