

# Deregulating health & safety

## A response to the National Manpower Commission

*The National Manpower Commission (NMC) is investigating a reduction of the legal provisions with which small businesses have to comply. This is part of the process known as "deregulation". Among the laws that will no longer apply are ones which protect workers' health and safety. This article deals with an Industrial Health Research Group (IHRG) report sent to the NMC, motivating strongly against these moves.*

*The IHRG examines one of the laws under review, the Machinery and Occupational Safety Act (MOSA). Basing its observations on a number of factory inspections the IHRG argues that MOSA should be improved, rather than scrapped, in order to reduce the toll of industrial disease and accidents on our society.*

An investigation by the National Manpower Commission (NMC) into the deregulation of small business threatens to undermine the protection of workers' health and safety. This is the substance of a report which has been submitted to the NMC by Cape Town's Industrial Health Research Group (IHRG).

The Minister of Manpower has given the NMC the task of investigating ways in which the small business sector can be deregulated.

The investigation can be seen to fall within the government's broad deregulation strategy which dates back to the mid-1980's. Motivation for the strategy can be found in the 1985 "Report on a Strategy for Small Business Development and for Deregulation", published by the President's Council Committee of Economic Affairs. It is argued in this report that "both the informal sector and the small business sector are sources of widespread employment and income because they are labour-intensive, competitive and easy to enter". Developing the small business sector, the report says, would stimulate the economy as a whole, but small businesses have difficulty in complying with laws and regulations because of the costs and administrative work involved.

In the Committee's opinion, rules and regulations which, amongst other things, protect worker's rights, were to be seen as "luxuries that only wealthy societies can afford". To encourage economic activity and the growth of small business the Commit-

tee therefore proposed that legislative controls be deregulated and that “a flexible approach in applying standards” be implemented. (*Deregulation of small business: who pays the social costs?* Critical Health No. 19: pp.28-37.)

## What does the investigation aim to find out?

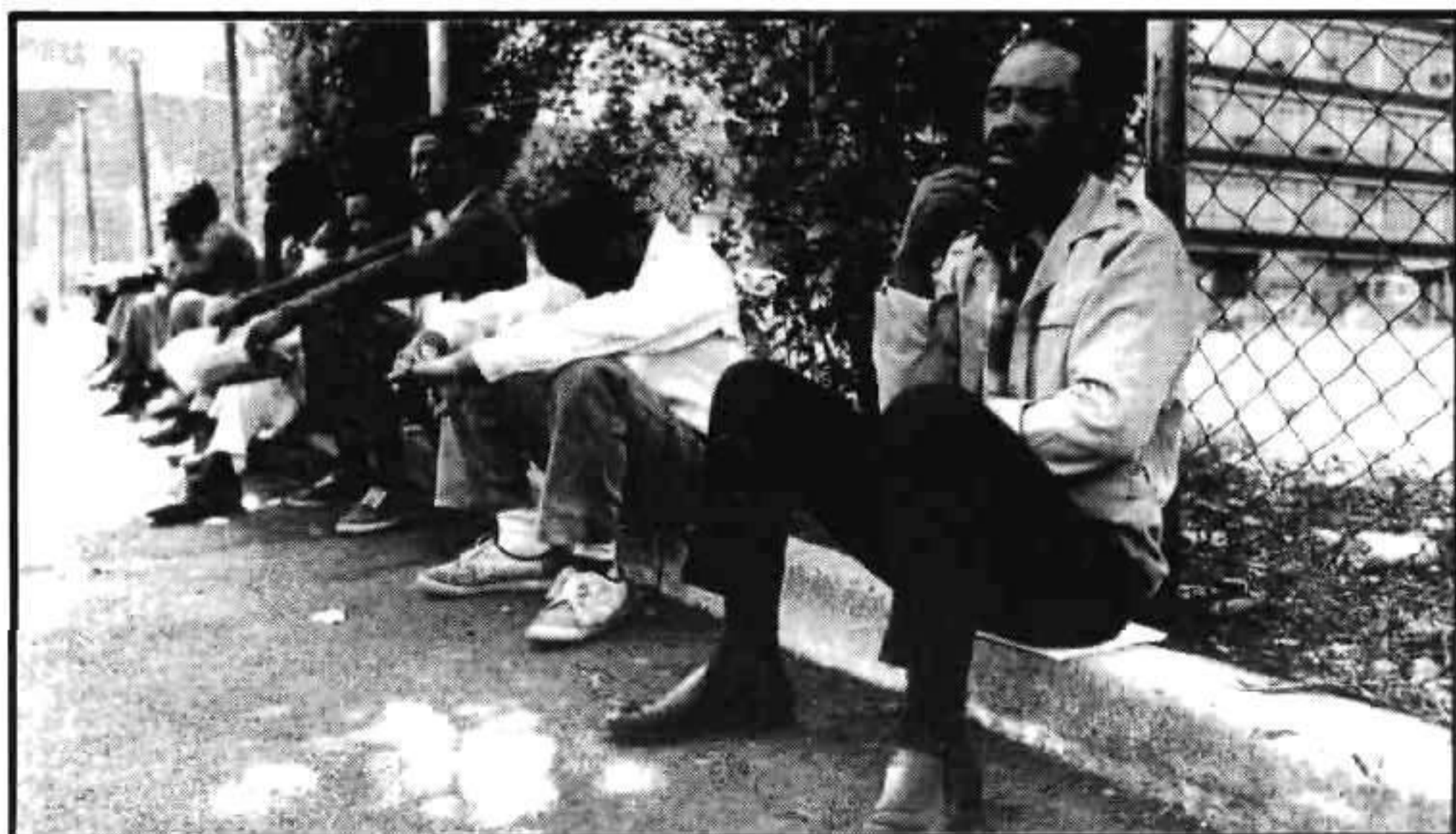
The NMC investigation intends to find out:

- (a) whether, and to what extent, the enforcement of labour legislation has a restrictive influence on the functioning, growth and development of the small business sector, and
- (b) whether there is any justification for differentiating between small and large business in terms of the law.

The investigation has been directed mainly towards small business owners themselves. Interested parties have been invited to give their comment on a number of laws, whether small businesses should be exempted from the provisions of these laws, or whether the laws themselves should be modified. The laws include:

- ☆ the Machinery and Occupational Safety Act, 1983 (MOSA)
- ☆ the Labour Relations Act, 1956
- ☆ the Basic Conditions of Employment Act, 1983 and the Workmen’s Compensation Act, 1941.

The NMC notes, however, that “the basic rights of...employees should still be protected”.



Unemployment may be reduced by encouraging small businesses but this should not occur at the expense of workers' health.

## Existing legislation is inadequate

The IHRG submitted an in-depth response to the NMC. Their report focusses mainly on the Machinery and Occupational Safety Act and relies on a number of factory inspections and industrial hygiene surveys conducted by the IHRG itself as well as by the National Centre for Occupational Health (NCOH).

On the basis of this research, the IHRG argues that even the existing legislation, such as MOSA, is ineffective in protecting the health and safety of workers. “Seven years after the promulgation of MOSA”, they argue, “conditions in many South African factories are not satisfactory from a health and safety point of view. The strategy of (unilateral) self-regulation (provided for in MOSA) has not been noticeably effective”.

## Don't scrap MOSA, improve it!

The IHRG's main criticisms of MOSA are as follows:

- ☆ there is no provision in the legislation for a role for trade unions at any level;
- ☆ there have been few legally enforceable health and safety standards coming from the regulations under MOSA;
- ☆ even where such standards exist the inspectorate has very limited resources and is not capable of mounting a full investigative service to monitor compliance;
- ☆ penalties under the Act for employers who contravene the Act are too mild to act as a real deterrent;
- ☆ to date there has been no requirement on employers to carry out medical screening for workers exposed to particular occupational health hazards, although this was included in the draft lead regulations which still have not reached final form;
- ☆ as the Department of Manpower has stated in its annual reports, the main function of MOSA is to allow for unilateral self-regulation by employers. It is not meant to serve as a direct government intervention to improve poor working conditions by legislating improved standards and monitoring compliance.

Is it effective to leave it up to managements to voluntarily monitor their own adherence to the MOSA regulations? There is a real conflict between the principle of “voluntarism” inherent in MOSA, and the concept of legal standards enshrined in regulations under MOSA;

Despite its criticisms of MOSA the IHRG notes that there are also certain positive aspects to MOSA, which would make its removal in the small business sector a backward step:

- ☆ it allows for representation of employees through the safety committee and safety representative system, even though this has been interpreted in a very limited sense by managements;

- ☆ there are some legally enforceable absolute standards in regulations under MOSA on basic issues such as machinery safety, asbestos levels in air, personal protective equipment, and so on;
- ☆ although compliance is likely to be even harder to enforce than in the manufacturing sector, it extended the scope of health and safety legislation to all economic activity including farm work and domestic work;

The IHRG argument is therefore that if the toll of occupational disease and accidents on our society is to be reduced, MOSA should be strengthened, along the lines which they have indicated, rather than removed altogether.

## **Removing MOSA is a step backwards**

*In particular, given that there are still serious problems for employees in factories, the IHRG argues that the removal of MOSA for small business will be a step backwards and will increase the already large burden to society of occupational disease and accidents, with the increase falling more on employees and their families than on employers or the state. The IHRG report continues:*

*“Small businesses have a tendency to employ largely casual labour, and there is*



**Because workers in small businesses do not usually have unions to protect them, legislation safeguarding their health and safety is crucial.**

seldom any provision for monitoring hazards and accidents, or for a factory clinic. They tend not to be organised by unions, and therefore there would be little protection for employees faced with unhealthy or dangerous deregulated conditions. They would also be in a poor position to ensure that their employers observe the standards which currently exist in the Basic Conditions of Employment Act. It is precisely in the small business sector where employees need legal protection because of their lack of union representation, and of an industrial framework for dealing with health and welfare questions”.

## **Deregulation may suit “big business”**

The IHRG points to certain companies which have made funds available to the various organisations promoting small businesses, so that small manufacturing concerns can be established. If small businesses are released from their obligation to comply with legal standards relating to health and welfare, there is a danger that larger firms may use this as an avenue to circumvent regulations in the big business sector. They may do this by establishing small subsidiaries to supply certain items, or by subcontracting work to exempted small businesses. In addition, this may discourage firms which intend to establish better health and safety practices, as they may feel that to do so would involve them in costs not faced by firms which subcontract to small businesses.

If small businesses are released from the duty to comply with both MOSA and the Workmen’s Compensation Act, companies will be able to ignore health, safety and welfare considerations for their workforce, and to escape the consequences, since they will not pay higher WCA contributions due to increased incidence of compensated illnesses and accidents from work. Thus even the financial incentive to improve conditions would be removed. This, the report states, would clearly be an unsatisfactory development.

## **Conclusion**

The IHRG conclude that conditions in South African factories are often poor, with little control over health and safety standards. “In our view, improvement depends on a more pre-emptive monitoring role for the state agencies concerned, and recognition of the role of trade unions in the law, rather than an approach based solely on the principle of unilateral self-regulation by industry.”

“In the small business sector, because of the lack of regulation by other means such as negotiations between trade unions and managements, legislative regulation on health matters should be strengthened rather than weakened and the inspectorate should target this sector for regular evaluations of compliance.” □