

THE OCCUPATIONAL MEDICINE BILL

MAIN AIMS OF BILL

The stated objectives of the Occupational Medicine Bill (OMB) are to establish an advisory committee for occupational medicine and to provide for medical measures to protect employees against medical conditions resulting from exposure to harmful substances or processes in the workplace.

The OMB is a response to the Erasmus Commission which produced its report in 1975 and showed the dismal state of occupational health services in South Africa. There are indications that this legislation has been on the drawing board for the last few years, a fact that explains many of the overlaps and lack of clarity between the OMB and the Machinery and Occupational Safety Act (MOSA) which was passed last year. As the OMB emerges after a struggle between the departments of Health and Manpower as to whom should control MOSA, this Bill can be seen as a "sop" to the Department of Health which lost that battle.

FEATURES OF THE OMB

* employers are obliged to provide an environment in which workers can not be exposed to harmful substances for greater periods of time nor in greater concentrations than laid down under MOSA.

* workers exposed to these harmful substances must be examined by a doctor and be declared fit before commencing work

* certain occupation related illnesses are to be declared notifiable (i.e. the Department of Health is to be notified if anyone is found to be suffering from one of these conditions)

* failure to comply with certain sections of the Bill will carry a penalty of up to R2 000 or 12 months imprisonment or both

* regulations can be made on a wide variety of issues including

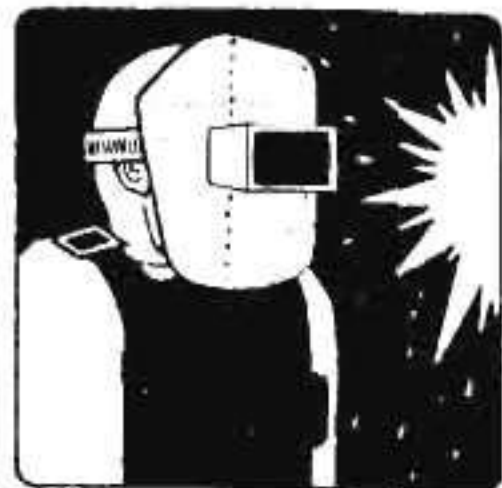
* the concentration of and period of exposure of employees to harmful substances

* the labelling of containers and education of workers concerning harmful substances

* the provision by employers of facilities for the prevention and treatment of medical conditions

* the manner in which employees are to be informed of the results of medical examinations

* exemption of certain employees from the requirements of the Bill



One extremely absurd regulation enables measures to be taken to ensure that workers are adapted to their jobs, rather than that jobs be adapted to the workers.

* victimisation of workers complying with the Bill is to be forbidden

* no employee found to be suffering from an occupation-related illness can be discharged from work until suitable arrangements are made for the medical treatment and "rehabilitation" (this is not defined) of the worker.

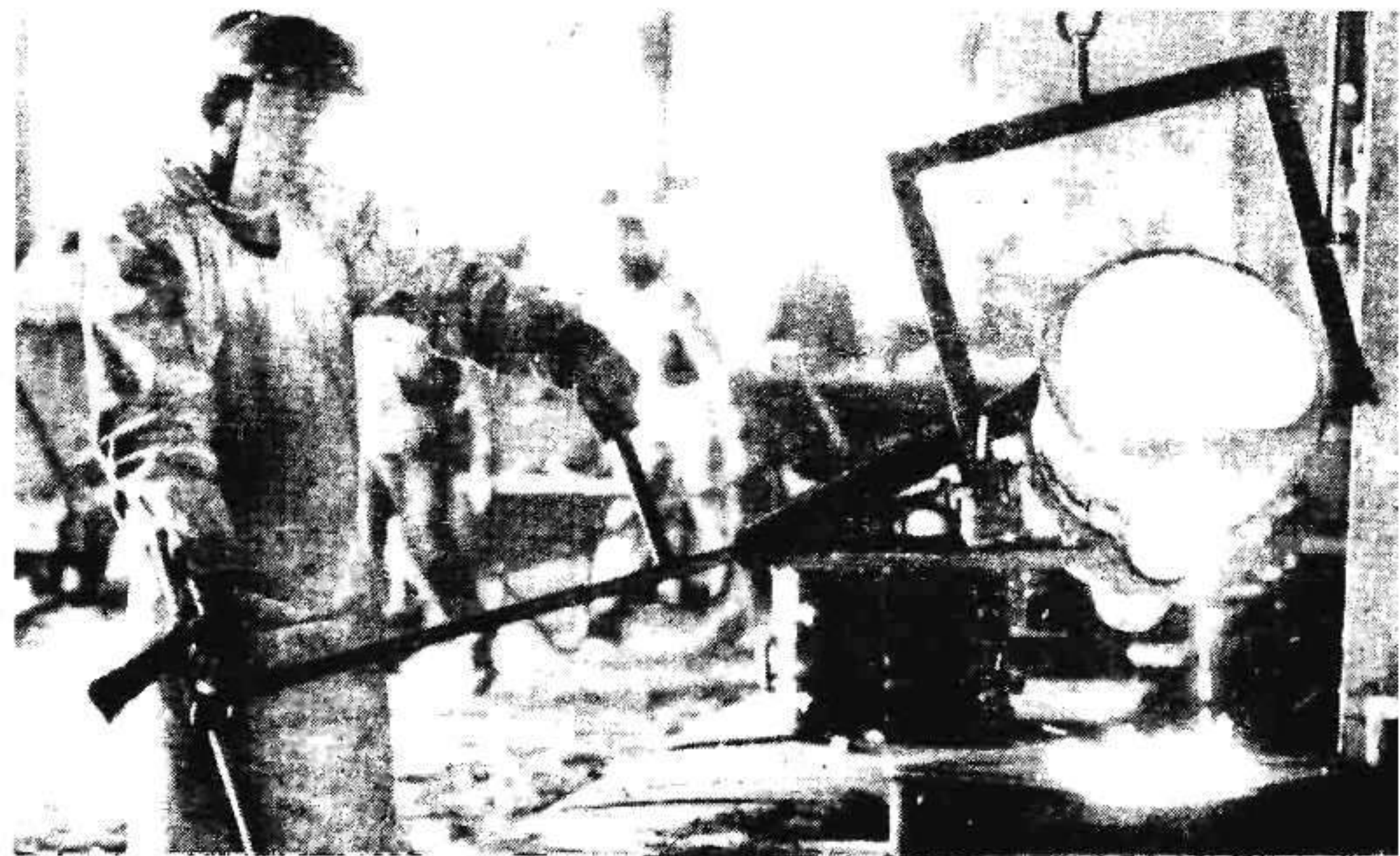
MAJOR ASPECTS OF OMB

There is clearly no attention given to the role of workers in promoting improved working conditions and health services at work. Neither individual employees nor organised workers are given a clear role in determining health and safety policy at the workplace. The only mention of employees and their role in health and safety in the workplace is the appointment by the minister of at least two representatives of employees to sit on the state-run Advisory Committee. Other than that there are again, like MOSA, heavy penalties for workers who refuse to comply with certain aspects of the Bill, for example, refusing to undergo a medical examination laid down by the Bill.

The initiative for promoting health and safety and its regulation is left with management. At this stage there is clearly inadequate machinery to police the Bill, should it become law, and management will be left more or less to exercise the degree of control that suits it in terms of economic costs.

The Bill introduces tremendous duplication between it and MOSA. In fact there is no clarity at all about the relationship between the structures set up by MOSA and those envisaged under this new Bill. Both MOSA and OMB enable the setting of exposure limits to dangerous substances at work but it is not

clearly stated whom will set these threshold limit values. It is not clear who will enforce the different aspects of MOSA and the OMB. Furthermore, no link is established between the factory safety committees set up under MOSA and the present legislation.



The Bill does not go any way towards setting up an effective health service infrastructure in industry. Although the Bill will deal with matters such as how often workers in particularly dangerous industries (e.g. battery manufacturing workers exposed to lead) are to be examined, the Bill does not set up any infrastructure to ensure that this is done. No mention is made, for example, of ensuring that employers with more than fifty employees must provide some form of health service. This, like many other matters, is left to be promulgated under the regulations.

Probably the most glaring defect in the Bill is the absence of a clause on the rights of employees. This should include the right to information about the substances with which workers work and their harmful effects, the right to call in an inspector whenever workers deem it necessary and the right to obtain the results of all inspections.

In conclusion, this Bill provides for the recognition, treatment, and prevention of work-related illnesses and the monitoring of the work environment. However, little requirements are introduced with the Bill and most changes will only become apparent once the regulations are promulgated. There is tremendous overlap between this Bill and MOSA and it is uncertain how responsibilities are to be divided between the Departments of Health and Manpower. There is no clause guaranteeing the rights of employees and this could certainly form the basis for considerable dissatisfaction by workers and their unions.

Finally, it must be stressed that this is the first draft of the Bill and numerous health-related organisations and some unions put in recommendations regarding the Bill before the end of February. Particular attention was devoted to the lack of a clause guaranteeing the rights of workers to participate in all matters concerning their health and safety.