

White Paper  
**A New Health and Safety at Work Act**

28<sup>th</sup> April 2023



**GOVERNMENT OF MALTA**  
MINISTRY FOR PUBLIC WORKS  
AND PLANNING

**OCCUPATIONAL  
HEALTH & SAFETY  
AUTHORITY**  
ohsa.mt



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## 1. Foreword by the Minister for Public Works & Planning Stefan Zrinzo Azzopardi

It is imperative that occupational health and safety standards and procedures at the workplace are adhered to. The lack of standards and procedures lead to injuries, ill-health and the tragic loss of life having a devastating effect on workers' quality of life, employers' businesses and reputation and the well-being of society and its economy.

The OHS Authority Act which set up the OHSA, established the framework for the adherence, monitoring and control of health and safety practices at the workplace. For the past two decades, the Act served its purpose, and was pivotal in securing notable improvements in this field. This resulted in less occupational injuries and deaths and better awareness of the benefits of achieving adequate standards. Yet, more needs to be done.



The OHSA was the silent catalyst encouraging those responsible to act, whilst carrying out its functions effectively. The principal Act also served its purpose well, however amendments are necessary to reflect evolving work practices. Social Partners, in particular, are being encouraged to be proactive and to fully participate in the development of occupational health and safety at the workplace.

It is time for the current principal Act to be reviewed to ensure that OHSA structures are better defined and serve their purpose effectively through the strengthening of operational checks and balances. The system of deterrents must also be upgraded to provide a more effective and efficient system of enforcement.

Twenty years since the establishment of the OHSA, a new Act is being proposed based on the knowledge of the past years whilst seeking to strengthen and enhance the necessary structures to meet the realities of today's society and the ever changing work practices. We are inviting everyone to make submissions to the proposals being presented to be part of our planned change.

## 2. Introduction

Good occupational health and safety management is of benefit to workers, their employers and society at large. Organizations with clear health and safety policies are aware that they not only prevent injuries and occupational diseases to their workers, but also create a positive working environment conducive to overall business success through improvements in productivity, competitiveness, profitability and the motivation of workers.

In Malta, occupational health and safety is currently regulated by the Occupational Health & Safety Authority Act of 2000, which was brought fully into force in January 2002 (the 'Current Act'). This Act includes a number of principles which are found in the EU Framework Directive for safety and health at work, which principles are applicable across the European Union.

Although the Act served its purpose well, as evidenced by the progress achieved by OHSA over the twenty years or so of its existence, it needs to be amended to reflect the changing world of work and to clear any provisions which could have given rise to misinterpretations.

The Ministry for Public Works and Planning feels that the current legislative framework needs to be reviewed to:

- ensure that the structures within the Occupational Health and Safety Authority (hereinafter referred to as the 'OHSA') are better defined and serve their purpose by strengthening the necessary internal and operational checks and balances;
- bring about more compliance amongst duty holders through an adequate system of deterrents and speedier recourse to justice;
- promote meaningful social partner participation and involvement.

The Current Act will be repealed and replaced with a new Act entitled the 'Health and Safety at Work Act' (hereinafter referred to as 'the New Act').

The New Act is being proposed following 20 years' experience since the establishment of OHSA, and the accumulated knowledge from this extensive experience shall be translated into the New Legislation which shall serve to strengthen and enhance the necessary structures to meet the realities which society today is facing on matters relating to occupational health and safety.

### 3. Background Information

According to the National Statistics Office, there were 55,950 active business units with more than one employee in Malta, with 99.83% of all companies being micro sized and SMEs. The largest single employer in 2022 was the Government with 21% of total employment. Each business unit can operate or perform work from more than one registered workplace, as would self-employed persons who may not perform work from one specified location. This essentially means that the number of workplaces which fall under the applicability of the OHS Authority Act, and which are liable to be monitored by OHSA is substantially large.

The largest economic sectors based on available NACE codes are wholesale and retail, manufacturing, construction and accommodation/food service activities. Construction, despite not being the highest economic sector, plays a very important part of the economy with around 10,000 new construction projects of different sizes commencing every year.

In the years that OHSA has been established, there have been several noticeable improvements, including



an increased awareness of the need to ensure high levels of occupational health and safety and a persistent downward trend in occupational incidents (as indicated in Figure 1).

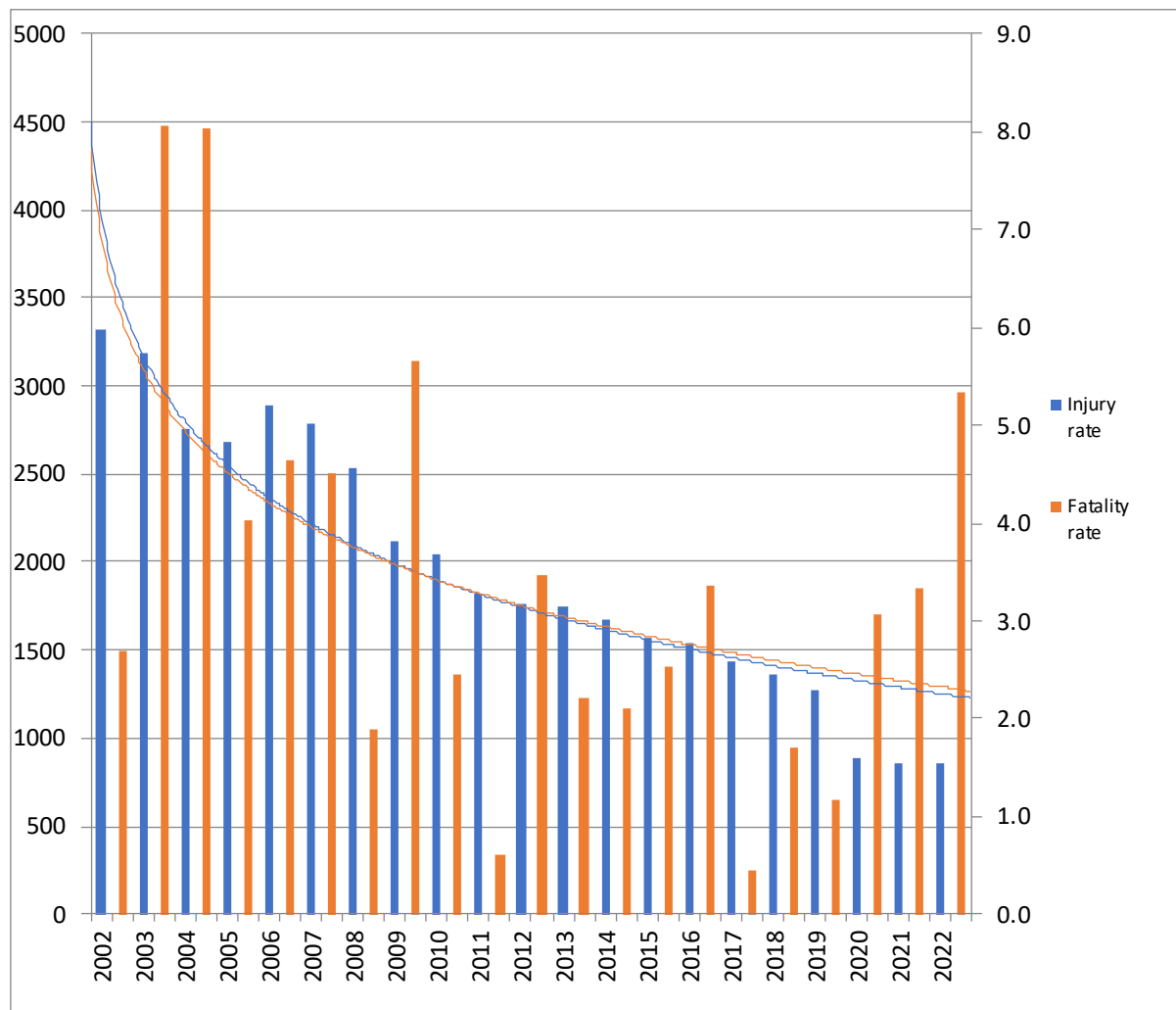


Figure 1: Occupational injury and fatality rates, 2002-2022\*.

In 2022, OHSa commissioned an independent statistician to analyse the numbers of injuries and fatalities at work, and which has arrived at a number of important conclusions. The overall injury and fatality rates show persistent downward trends (a finding which is not attributed to chance). Sectoral rates show similar downward trends, however, the magnitude of this decrease varies across sectors. Wholesale, retail and repair sectors have the smallest reductions in injury and fatality rates, while the manufacturing sector has the largest decrease. The mean annual fatality rate per 100,000 workers is 3.37, where a number of risk factors were found to increase the likelihood of fatal accidents. On average, work in construction accounts for 2.02 fatalities per 100,000 workers, of which 1.17 occur as a result of dangerous falls. Foreign workers account for 0.99 annual fatalities per 100,000 fatalities, whereas foreign workers in construction account for 0.75 fatalities per 100,000 workers. The analyses also highlight the positive impact of OHSa's actions on the injury and fatality rates, in view of the correlation observed between the number of accidents and several OHSa key interventions, including inspections and the issue of administrative fines.

Whereas the trends for both injuries and fatalities more or less follow each other, it has become apparent that both are approaching a plateau, and over the years to come, the rate of descent will continue to slow down. The experience of many countries has shown that the trends will only start to decrease further if there is a change in strategic approaches and renewed focus. This in fact will be the objective of the New Act, and the

\*Source Data: OHSa & Social Security

main justification for these proposed changes.

#### **4. Amendment Concepts**

The main focus of the New Act will be the Promotion and Safeguard of the Health and Safety of Workers at Work.

Hence, the main objectives of the New Act are to:

- restructure OHSA to delineate the roles and responsibilities of the various parts which make the Authority, while giving a stronger voice to the social partners in the development of national policies for OHS;
- ensure higher levels of governance at all levels of OHSA operations;
- remove unclear provisions within the Current Act which could give rise to misinterpretation; and to
- reform the system of penalties to increase their deterrent effect, whilst ensuring fast and effective compliance.

In the light of the experience of recent years, OHSA has substantially increased the number of criminal proceedings due to breaches of the Occupational Health and Safety Authority Act and/or regulations made under the same Act. A consequence of this has been the creation of a backlog of cases waiting to be appointed by the Courts.

One of the proposed measures for more effective and efficient enforcement is to set up an impartial and independent Health and Safety Tribunal, to hear and decide breaches of OHS legislation which are of an administrative nature. This will limit recourse to the Courts to certain specified circumstances. The setting up of the Tribunal will respect the basic principles of natural justice.

This system will in turn ensure that administrative misdemeanours are handled accordingly in an efficient manner with a view to enhancing compliance, whilst serious incidents which are criminal in nature will still be determined by the competent courts. The said Tribunal will also be able to hear and decide objections to Orders issued by Officers.

The New Act will also cater for the possibility of issuing administrative instruments (Administrative Instruments), for the purposes of regulating ongoing and current issues. The New Act will therefore grant the force of law to said Administrative Instruments which will be issued by the OHSA from time to time and which will be published on the OHSA's portal.

#### **5. The new structure of OHSA under the New Act**

Whereas OHSA will remain having a distinct legal personality, it will be restructured to consist of a Governing Board and a Health and Safety Executive (hereinafter referred to as the 'Executive'). A new Health and Safety Council will be established so as to give a voice to the Social partners on matters of occupational health and safety.

OHSA will thus remain a body corporate having a distinct legal personality and shall, subject to the provisions

of the New Act, enter into contracts, acquire, hold and dispose of any kind of property for the purposes of its functions, and shall be empowered to do all such things and enter into all such transactions as are incidental or conducive to the exercise or performance of its functions under the New Act.

### **The Governing Board**

The Governing Board will have the responsibility of ensuring that the Executive carries out its corporate business to a high level of governance and for this purpose shall review and oversee that Government policies in force from time to time are abided by. The Governing Board shall also review the Authority's management accounts, the human resource plans and the financial audits, and may issue directives to the Executive regarding the same. This will serve as a system of checks and balances in connection with the performance of the members of the Executive.

It shall consist of a chairperson and a minimum of 4 members appointed by the Minister. The Governing Board shall be precluded from being involved in executive decisions or actions taken by the Executive in fulfilment of the scope and objectives of the New Act.

### **The Health and Safety Executive**

The Executive shall be headed by a Chief Executive Officer who shall be appointed by the Minister, in consultation with the Governing Board for a defined period under such terms as established in the letter of appointment, and such period may be extended for further periods as necessary.

The Executive will also have the authority and responsibility for the implementation of the provisions of the New Act and shall have such functions and powers in respect of its structures as are set out in the New Act and such other functions and powers as may devolve upon it under any other law, or as may be assigned to it by the Minister responsible for Occupational Health and Safety.

An extensive and non-exhaustive list of functions of the Executive will be included in the New Act.

It is to be noted that a number of functions which belong to OHSA in the Current Act shall be assigned to the Executive.



The affairs and business of the OHSA shall be the responsibility of the OHSA itself but the executive conduct of the Authority, its administration and organisation, and the administrative control of its Officers and employees shall be remain being the responsibility of the Chief Executive Officer.

The Chief Executive Officer shall be responsible for the implementation of the objectives of the OHSA in the exercise of its functions, and the Chief Executive Officer shall:

- be responsible for the implementation and fulfilment of OHSA's established goals and for the efficient use of its resources.
- ensure that the necessary strategies for meeting the objectives of OHSA are developed; the Chief Executive Officer shall also have such other duties relating to occupational health and safety which are not inconsistent with the provisions of the New Act, as the Governing Board or the Minister may assign from time to time.

The legal and judicial representation of the Authority shall vest in the Chief Executive Officer.

## **6. Setting up a Health and Safety Council**

The main objective of the Council is to give a stronger voice to the social partners, who shall be consulted on matters concerning occupational health and safety, and who will be encouraged to promote occupational Health and Safety as defined in the New Act.

The Council shall consist of any number of members as may be deemed necessary by the Minister responsible for Occupational Health and Safety, and shall include but shall not be limited to a Chairperson, appointed by the Minister, the Chief Executive Officer of the Authority, the Director General of Industrial and Employment Relations, or a representative thereof, members appointed by the Ministers responsible for health, economic affairs, and employment; and an adequate number of persons representing those constituted bodies which in the opinion of the Minister are most relevant to the objectives of the Council, with each body nominating one member.

The Council will be responsible for fostering harmonious relations on matters of occupational health and safety between the various stakeholders and duty holders, soliciting participation by the social partners and promoting initiatives in favour of high levels of occupational health and safety, and, in general, encouraging constructive dialogue between constituted bodies about the benefits of ensuring occupational health and safety.

The introduction of this Council will serve to introduce further communication between the social partners and various Governmental stakeholders in order to enhance social dialogue in connection to matters relating to health and safety at work.

There shall be a defined process in the preparation of Health and Safety policies for the consideration of the Minister and the Health and Safety Council will be consulted in the process.



## 7. An additional function for OHSA – the issue of Administrative Instruments

This is a new concept being introduced through the New Act, whereby the OHSA with the consent of the Minister will be able to issue Administrative Instruments which have the force of law, in order to regulate particular matters falling within its remit in terms of the New Act. These Administrative Instruments will generally be reserved to situations requiring urgent, incisive action by OHSA.

In this regard, an Administrative Instrument may also create and impose administrative fines for the breach by any person of any provision of the New Act or of an administrative decision made under it.

Administrative Instruments shall have the force of law and be binding in their generality, and any person who fails to comply with an Administrative Instrument shall be in breach of the New Act.

## 8. An increase in Employer's responsibilities

Current subsidiary legislation, namely the General Provisions for Health and Safety at Work Places Regulations (S.L. 424.18) requires employers to designate one or more persons (referred to as competent person/s) to assist them in undertaking the measures which are required to be taken in relation to the protection of OHS and the prevention and control of occupational risks. This obligation, which emanates from the EU's Framework Directive, will be included in the New Act, together with a proviso (already existing in the subsidiary legislation) that where an employer designates or enlists a person/s to assist them in undertaking the measures which are required to be taken in relation to the protection of occupational health and safety and the prevention and control of occupational risks, the employer shall not be discharged from such incumbent duties arising out of the New Act.

Other responsibilities which have been included in the New Act and which will make the employers' responsibilities more onerous include the obligation to prepare a statement of the general policy with respect to occupational health and safety, which shall include the main measures for the implementation of such a policy, and to bring the statement and any review of it to the notice of all the workers and their representatives.

It also shall be the duty of the employer to inform any contractor, self-employed person and workers from outside the organisation of the contents of the occupational health and safety policy, the presence of specific hazards at the place of work, the resultant risks, and the preventive and protective measures required to be taken, and is to ensure that the provisions of the policy are abided by at all times.



### **The appointment of a Health and Safety Responsible Officer ('HSRO'):**

It is being proposed that a new concept is discussed for the employer to appoint one or more of its Directors as the HSRO who will be tasked to supervise and oversee that OHS policies and procedures are being followed in accordance with OHS legislation.

This shall be without prejudice to all the obligations of the Employer arising at law and in terms of Directive 89/391/EEC – the “Framework Directive”.

The Employer has the duty to ensure that the HSRO has all the necessary resources as required to permit the fulfilment of the role.

The HSRO shall not be liable for damages for anything done or omitted to be done in the performance of functions, if it is proven that the Employer failed to provide the HSRO with all the adequate resources.

The HSRO together with the Employer are responsible for ongoing monitoring in accordance with the Employer's Health and Safety Policy.

Where an Employer appoints an HSRO, this shall not discharge such employer from fulfilling the responsibilities in this area.

The HSRO concept is being seen as an effective measure to increase compliance culture in connection with health and safety at work.

However the concept of an HSRO will have to be regulated through subsidiary legislation.

## **9. More efficient and effective enforcement**

According to the current Act, OHSA has the prerogative of imposing an administrative fine in lieu of instituting criminal proceedings. The Act does not provide a system of appeal, but instead requires OHSA to start criminal proceedings when fines are not paid, or when an intimated party wishes to object against the imposition of such a fine. In fact, most cases being brought to court consist of cases where the intimated party does not pay the fine imposed by OHSA. To avoid such situations, and to give intimated parties the opportunity to formally object to such fines, a Health and Safety Tribunal will be set up to hear claims in connection with infringements which are of an administrative nature and as a result of which an administrative fine can be imposed.

This shall be without prejudice to proceedings in the Criminal Courts dealing with offences committed in relation to the presence of an immediate and serious risk to occupational health and safety or where there has resulted at a place of work a fatality or serious injury or disease to any persons.

Uncontested administrative penalties will become executive titles following the lapse of a pre-established time period. Within such time period, any aggrieved person may petition the Tribunal to contest such administrative penalty.

Administrative Penalties will be capped as follows:

- Administrative Penalties up to [Euro 1,500] to be decided by the Tribunal composed of one person (a lawyer with at least 5 years' experience) (by written petitions);

- Administrative Penalties up to [Euro 20,000]: Tribunal will be composed of 3 persons (One retired judge or Magistrate acting as chairman, with two Members being professionally warranted persons of 5 years' experience);
- Appeal from the decisions given by the Health and Safety Tribunal shall lie to the Court of Appeal (Inferior jurisdiction) only on points of law.

The New Act also specifies the procedure of the Health and Safety Tribunal.

In the absence of an appeal, the decision of the Authority in awarding the administrative penalty shall become final and shall constitute an executive title for the purposes of the Code of Organization and Civil Procedure as if the decision had been ordered by a judgement of a court of civil jurisdiction.

In addition to the Health and Safety Tribunal's competence (when constituted of three members) to hear the contestations in connection with the said administrative fines, an appeal shall lie to the Health and Safety Tribunal by any person following decisions or orders imposed by the OHSA i.e. orders imposed by the Officers of the Authority.

The OHSA's order shall remain in force until such time as it is revoked by an OHSA Officer or until it has been revoked by the Health and Safety Tribunal.

The terms of the Code of Organization and Civil Procedure relating to the warrant of prohibitory injunction shall not apply to any immediate decision or order imposed by the Authority in terms of the Act, when done in good faith and in connection with matters relating to the imminent safety of workers.

In addition, the draft proposes an increase in applicable penalties which shall not be less than one thousand euro (€1,000), currently €466), and not exceeding fifty thousand euro (€50,000), currently €11,646), for each and every offence for which the person has been found guilty, or to both such fine and imprisonment, and on a second or subsequent conviction, to a fine (multa) of not less than two thousand euro (€2,000) for each and every offence for which the person has been found guilty, or to imprisonment for a term of not less than one year and not exceeding four years or to both such fine and such imprisonment.

## 10. Conclusion

The implementation of the New Act will contribute to the much-needed compliance culture and will also provide a reformed and effective system of deterrence that is applied transparently, equitably and efficiently.

The implementation of the New Act will also ensure a high level of governance, and provide a stronger voice to the social partners in the development of health and safety.

The various substantive changes being proposed are intended to ensure that the Act will act as a legal platform guaranteeing a modern, solid and continuously updated legal platform in order to promote and safeguard the health and safety of workers at work.



This White Paper can be accessed on  
**[publicconsultation.gov.mt](https://publicconsultation.gov.mt)**  
and submissions will be received till Friday 9th June 2023.



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