

# OCCUPATIONAL SAFETY AND HEALTH

## Executive Summary

1. “Safety and Health at Work” is one of the Labour Department (LD)’s programme areas. The aim of the programme area is to ensure that risks to the safety and health of people at work are properly managed by legislation, enforcement, education and publicity efforts. For 2017-18, the estimated expenditure for the programme area is \$510 million.

2. Occupational safety and health is regulated mainly through: (a) the Factories and Industrial Undertakings Ordinance (FIUO – Cap. 59); and (b) the Occupational Safety and Health Ordinance (OSHO – Cap. 509). The FIUO was enacted in 1955 to provide for the safety and health protection for workers in the industrial sector. It applies to industrial undertakings such as factories, construction sites and catering establishments. The OSHO was enacted in 1997 to extend the safety and health protection of employees to the majority of economic activities. It covers almost all workplaces.

3. The Occupational Safety and Health Branch (OSHB) of the LD is responsible for work related to occupational safety and health. As at 31 March 2017, the OSHB had a staff establishment of 642. The Audit Commission (Audit) has recently conducted a review of the LD’s work in occupational safety and health.

### Occupational safety: inspection and enforcement

4. *Need to strengthen enforcement of notification requirement for Notifiable Workplaces.* The OSHB is responsible for carrying out inspections of workplaces and initiating enforcement action where necessary. There are two types of workplaces, namely building and engineering construction (BEC) workplaces (i.e. construction sites) and non-BEC workplaces. As at September 2017, information on 36,692 BEC workplaces and 141,206 non-BEC workplaces was kept in the OSHB’s database. The LD’s focus of inspection is placed on: (a) BEC workplaces; and (b) non-BEC workplaces subject to statutory workplace notification requirements

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(hereinafter referred to as Notifiable Workplaces). The person having the management or control of a Notifiable Workplace is required to notify the LD of the workplace before commencement of operation. Audit examined the LD's investigations of 20 accident cases that occurred in 2016 at Notifiable Workplaces and found that the persons concerned of eight (40%) Workplaces had not submitted the required statutory notifications to the LD before the LD's investigations. These eight Workplaces had commenced operation for 90 days to 18 years and 5 months. Audit checked the records for the period January 2012 to July 2017 and noted that no prosecution had been taken by the LD against non-compliance of the notification requirement (paras. 2.2 to 2.5).

5. ***Need to review notification requirement for BEC workplaces.*** Although the construction industry is accident-prone, unlike the notification requirement for Notifiable Workplaces, notification of BEC workplaces is only required to be submitted within seven days after commencement of the construction work. The current notification requirement for BEC workplaces leaves a time gap between the commencement of work and the notification submitted to the LD (para. 2.8).

6. ***Need to review the list of hazardous trades.*** The LD gives inspection priorities to workplaces of 23 hazardous non-BEC trades, which are identified by the LD according to the assessment of the prevailing risks. The last review of the list of hazardous trades was completed in January 2013. The review recommended that similar review should be conducted at a three-year interval. Not until July 2017 did the LD commence a new round of review, which may take about one and a half years to complete (paras. 2.3, 2.9 and 2.10).

7. ***Need to clear backlog and improve documentation for inspection work.*** The LD has a bring-up system for workplace files to be brought up for inspections. If the file is not brought up and assigned to an inspecting officer on the scheduled date, it is counted as a backlog. Audit noted that, as at 31 March 2017, there were 6,074 backlog cases of inspection on inactive BEC workplaces (i.e. construction sites where works were carried out intermittently or sites under defects liability period), and 23,414 backlog cases on non-BEC workplaces. The LD had not monitored whether inspections were carried out according to schedule. Audit examined 80 inspections carried out by the LD in the period from 1 April 2016 to 31 March 2017 and found that 24 (30%) inspections were conducted more than 90 days after the workplace files were brought up. Audit also noted that inspecting officers only documented the irregularities identified during

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inspections, but not the details of inspection work carried out, such as the work processes examined and the results of such examinations. Moreover, the LD reported in its Controlling Officer's Report (COR) the number of inspections conducted by the Operations Division of the OSHB under the FIUO and the OSHO. In the period from 2012 to 2016, the reported number of inspections carried out per year ranged from 123,115 to 131,339. Audit examination revealed that if an inspection was conducted jointly by more than one inspecting officer, the LD counted the number of inspecting officers as the number of inspections conducted. Had an inspection been counted as one irrespective of how many inspecting officers took part in the inspection work, the number of inspections carried out per year during the period would have ranged from 44,756 to 73,565 (paras. 2.15 to 2.17, 2.19, 2.22 and 2.24).

8. ***Need to strengthen deterrent effect of occupational safety legislation.*** In the period from 2012 to 2016, the average amount of fines imposed by the court on cases convicted under the FIUO and the OSHO had increased by 47% from \$7,723 in 2012 to \$11,390 in 2016. Audit analysis of the highest amount and the average amount of fines under the five most common offences of the FIUO and the OSHO revealed that notwithstanding the increase in amount of fines, the highest amount and the average amount were significantly below the maximum amount stipulated in the legislation (para. 2.30).

### Occupational safety: training

9. ***Need to improve planning of inspection on mandatory safety training courses.*** Every person engaged in specific high risk sectors, activities or machine operations is required to complete the relevant mandatory safety training (MST) course organised by a training course provider (TCP). In 2016, there were 146 TCPs providing 704 MST courses. The LD conducted 225 inspections on the 146 TCPs and issued 17 warning letters and 5 directions. Of the 225 inspections, 182 (81%) were conducted at the time when there was no course session. As a result, many aspects of the courses could not be observed. Instead, the LD inspected the TCP's documentation (paras. 3.2, 3.4 and 3.6).

10. ***Need to expedite implementation of improvement measures recommended by the 2009 review on MST courses.*** In 2009, the LD conducted a review to devise improvement measures on recognition and monitoring of MST courses. In April 2011, the LD proposed to the Legislative Council Panel on Manpower a

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two-phase approach to implement the improvement measures. Up to August 2017, two of the three Phase One improvement measures, namely the standardisation of course contents and the centralisation of issuance of examination papers for the MST courses, had not been fully implemented. Furthermore, there was also no timetable to implement these measures and the Phase Two measures (paras. 3.7 to 3.9).

11. ***Some Registered Safety Auditors are not Registered Safety Officers.*** The FIUO and its subsidiary regulations stipulated that the contractors or proprietors of some workplaces are required to employ an Registered Safety Officer (RSO) to assist in the promotion of the occupational safety and health, and/or an Registered Safety Auditor (RSA) to audit the required safety management system. To register as an RSA, a person shall be an RSO and fulfil the specified requirements. The designation of an RSA is valid for life while the registration of an RSO is valid for a period of four years subject to renewal or revalidation. Some RSAs will cease to be RSOs after they have become RSAs if they choose not to apply for renewal or revalidation of the RSO registration upon expiry. The lists of RSOs and RSAs as at 31 May 2017 indicated that 29 (2.3%) of the 1,273 RSAs were not RSOs (paras. 3.12, 3.14 to 3.16 and 3.18).

## Occupational health

12. ***Need to improve arrangements for medical examination of radiation workers.*** Every year, the Kwun Tong Occupational Health Clinic (KTOHC) reserves a number of sessions exclusively for carrying out medical examinations of workers prone to exposure to radiation. For each session, 30 examinations can be carried out. Audit found that the utilisation of the reserved sessions was decreasing in the period from 2012 to 2017 (up to June): (a) the annual average number of no-show cases per session ranged from 2.7 to 4.2 (11% to 15% of the booked slots); and (b) the average number of booked examinations in each session decreased from 27.8 to 22.9 and the number of sessions in which not more than 20 examinations were carried out increased from 17% to 56% of the total number of sessions. Moreover, the law stipulates that the examinations carried out for the workers' first employment would be provided free of charge, but it does not stipulate that the periodic examinations after the workers' first employment would be provided at a charge or free of charge. Audit noted that workers and their employers were not required to pay any fee for the periodic examinations (paras. 4.4, 4.6 to 4.8, 4.10 and 4.11).

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13. *Need to monitor progress of workplace inspections.* The LD did not monitor the number of outstanding inspections and the delay in carrying out inspections after they were brought up for inspection. Audit reviewed 30 outstanding inspections on occupational health as at 30 June 2017 and found that all of them had been outstanding for more than six months after they were brought up. The outstanding periods ranged from 7 months to 4.25 years, averaging 2.17 years. Audit also reviewed 24 inspections conducted by the LD in the period from July 2016 to June 2017 and found that there were delays in 13 (54%) of the 24 inspections. The delay ranged from 4 days to 3 years, averaging 11 months (paras. 4.18 to 4.20).

14. *Need to improve reporting of performance indicators in COR.* For 2016, the LD reported in the COR that it had achieved 22,629 “investigations/surveys/examinations/assessments/clinical consultations” without the breakdown information. Audit noted that the number comprised 2,983 investigations, 7,018 surveys, 1,471 medical examinations, 713 assessments and 10,444 clinical consultations (para. 4.23).

### Audit recommendations

15. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Labour should:**

#### *Occupational safety: inspection and enforcement*

- (a) **step up measures to strengthen the enforcement of the notification requirement for Notifiable Workplaces (para. 2.11(a));**
- (b) **review the reasonableness of the submission deadline for notification of construction work and if necessary, tighten the deadline (para. 2.11(c));**
- (c) **closely monitor the progress of the review of the list of hazardous trades to ensure that it is completed in a timely manner (para 2.11(d));**

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- (d) **take measures to ensure that there is no delay in bringing up cases for inspection and conducting inspections after the cases were brought up for inspection (para. 2.26(a));**
- (e) **take measures to clear the existing backlog of inspections as soon as practicable (para. 2.26(b));**
- (f) **improve the documentation of the inspection work performed (para. 2.26(c));**
- (g) **separately disclose in the COR the number of workplaces inspected (para. 2.26(g));**
- (h) **monitor closely the need to review the labour legislation with a view to strengthening the deterrent effect of the legislation (para. 2.32);**

### ***Occupational safety: training***

- (i) **arrange inspections on the TCPs during time period when there are course sessions taking place as far as practicable (para. 3.10(a));**
- (j) **expedite the implementation of the improvement measures recommended by the 2009 review on MST courses (para. 3.10(b));**
- (k) **review whether there is a need to revise the Factories and Industrial Undertakings (Safety Management) Regulation to address the shortcomings that some RSAs are not RSOs (para. 3.25(a));**

### ***Occupational health***

- (l) **in collaboration with the Director of Health, take measures to reduce the no-show rate of radiation workers for medical examinations (para. 4.16(a));**
- (m) **monitor the utilisation of time slots reserved for medical examinations for radiation workers to ensure that the clinical resources are optimally utilised as far as practicable (para. 4.16(b));**

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- (n) **in collaboration with the Director of Health, review the justifications for not charging radiation workers or their employers for periodic medical examinations carried out at the KTOHC after the workers' first employment (para. 4.16(c));**
- (o) **closely monitor the progress of workplace inspections (para. 4.21(a));**
- (p) **take measures to minimise the number of outstanding inspections in future (para. 4.21(c));**
- (q) **ascertain the number of existing backlog inspections and take effective measures to clear the backlog as soon as practicable (para. 4.21(d)); and**
- (r) **with a view to enhancing transparency, consider reporting separately in the COR the number of investigations, surveys, examinations, assessments and clinical consultations (para. 4.25(a)).**

## **Response from the Government**

16. The Commissioner for Labour agrees with the audit recommendations.