



Performance Audit:
A Follow-Up on the 2016 Analysis on OHSA's Operations -
A Case Study on the Construction Industry
June 2020



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- A Case Study on the Construction Industry

Report by the Auditor General
June 2020

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List of Abbreviations

AF	Administrative fine
BICC	Building Industry Consultative Council
GOP	Gainfully Occupied Population
KPI	Key Performance Indicators
LN	Legal Notice
MCAST	Malta College for Arts, Science and Technology
MEPA	Malta Environment and Planning Authority
MIS	Management Information System
MQRIC	Malta Qualifications Recognition Information Centre
NAB	National Accreditation Board
NAO	National Audit Office
NSO	National Statistics Office
OHS	Occupational Health and Safety
OHSA	Occupational Health and Safety Authority
PR	Public Relations
PS	Project Supervisor
SO	Order to Stop Works
SOP	Standard Operating Procedure
TV	Television
UOM	University of Malta

Executive Summary

Why This Study?

This report follows up on the 2016 Performance Audit: An Analysis on OHSA's Operations – A case Study on the Construction Industry. The aim of this audit was to assess whether the recommendations put forward by this Office in 2016 have been accepted or otherwise and to what extent.

What NAO Recommends

NAO encourages OHSA to expedite the introduction of the MIS since this is central for improved operations. While this Office acknowledges that the acquisition of an MIS would carry with it a substantial price tag, it however strongly believes that an entity with an inspectorate remit as wide and varied as that of the OHSA, simply cannot do away without such a tool. The Authority is encouraged to ascertain that all necessary components, including those highlighted in this report, are adequately provided for in the technical specifications of this system. Finally, NAO highlights that the introduction of this system will also inevitably influence the perceived need for additional human resources, with this being expected to decrease due to process automation. This Office also urges OHSA to revisit its position in instances in which it did not accept NAO's original recommendations.

NAO's Key Observations

NAO has observed that OHSA currently relies heavily on paper and makes extensive use of MS Excel to keep data in the absence of a more adequate Management Information System (MIS). Moreover, this Office is of the opinion that the lack of an MIS is preventing the Authority from managing a number of responsibilities in a more efficient and effective manner. In particular, this Office observed that this lack of an adequate MIS inhibits the downward revision of the set threshold for the Authority to be officially notified of the commencement of a construction project, and precludes OHSA from devising a profiling system through which it could better allocate and prioritise its inspectorate effort.

This Office also observed that OHSA is understaffed, though this shortage would be mitigated if the automation of certain processes is introduced through the aforementioned MIS.

This study also found that, contrary to what was proposed in 2016, the legal responsibility of appointing a Project Supervisor (PS) to oversee occupational health and safety (OHS) considerations in a construction project remains with the client. Seeing that this latter stakeholder may not be fully knowledgeable on OHS requirements, NAO still maintains that the legal responsibility to appoint a PS should be shifted to other, more technically conversant stakeholders. In addition, this Office negatively noted that the inclusion of competent persons (who, in the Authority's opinion, can adequately fulfil the duties of a PS) on OHSA's website remains voluntary. This goes contrary to NAO's recommendation that the Authority should vet anyone who wishes to perform these duties, include all those who meet its requirements in a published list, and that those listed should then be the only legally allowable options to be appointed as PSs on construction projects.

While NAO concedes that an all-encompassing checklist may be unwieldy when OHSA's officials carry out inspections on construction projects, it still firmly believes that all details resulting from an inspection should be comprehensively recorded on a checklist, with infringements not specifically pre-listed being documented in the 'Other Remarks' section. This consideration stems from the fact that a significant portion of reviewed inspection files by the audit team did not include a checklist. In the few cases in which these were found in the respective file, NAO noted that these were not always comprehensively filled in.

Chapter 1

Introduction

This chapter presents a follow-up on the occupational health and safety (OHS) situation in Malta from that reported upon in NAO's 2016 publication, together with an insight on occupational accidents across all local industries. The audit's scope, objectives and methodology utilised to complete this follow-up and required analysis are also laid out, together with a synopsis for both of the report's chapters.

1.1. Why this Follow-Up study?

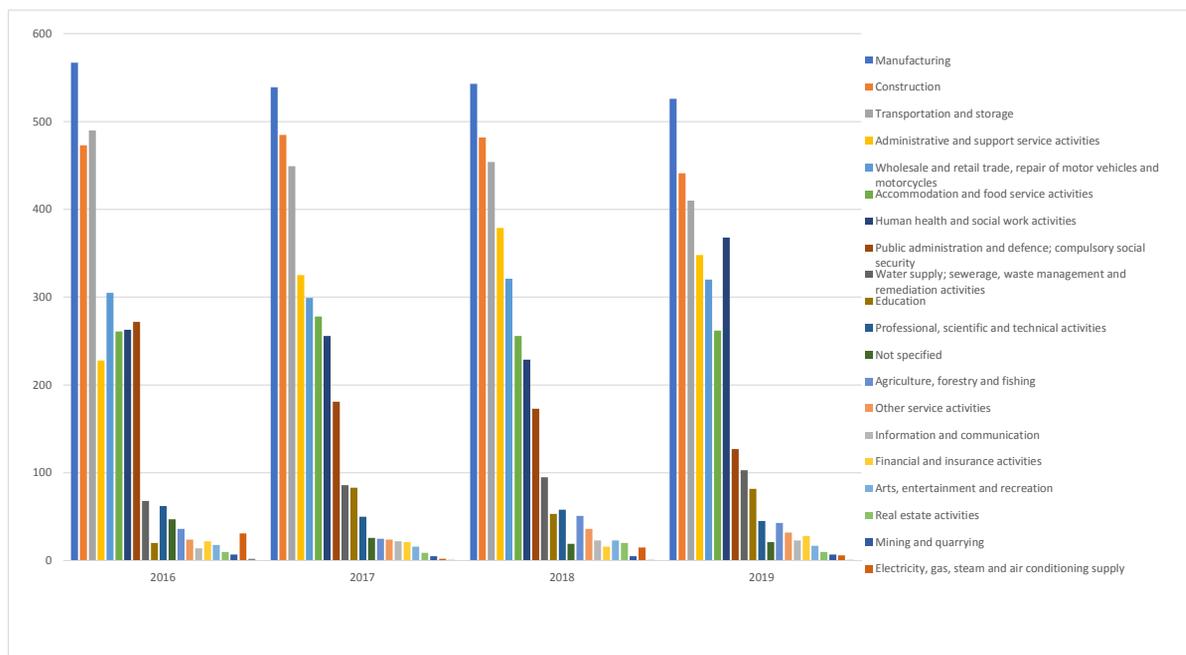
- 1.1.1. The National Audit Office (NAO) report titled "*Performance Audit: An Analysis on OHSA's Operations – A case study on the Construction Industry*" (issued in April 2016) primarily concluded that OHSA should focus more on its regulatory and enforcement roles, particularly through additional deployment of officers on-the-ground, as well as the widening, as much as possible, of the Authority's visibility and overall reach on the sector at hand. In addition, NAO felt that checks performed on sites should be more comprehensively carried out to ascertain full compliance to OHS standards.
- 1.1.2. The 2016 study proposed a number of recommendations intended to address the highlighted issues and concerns. This follow-up audit is therefore intended to assess the Authority's progress in implementing this Office's recommendations.

1.2. Background Information

The Local Accident Scenario

- 1.2.1. Similarly to what was reported in 2016, NAO once again reconfirms that the highest number of registered accidents occur in the manufacturing sector followed by the construction sector. Figure 1 presents the number of accidents that occurred in all local industries during period January 2016 and December 2019.

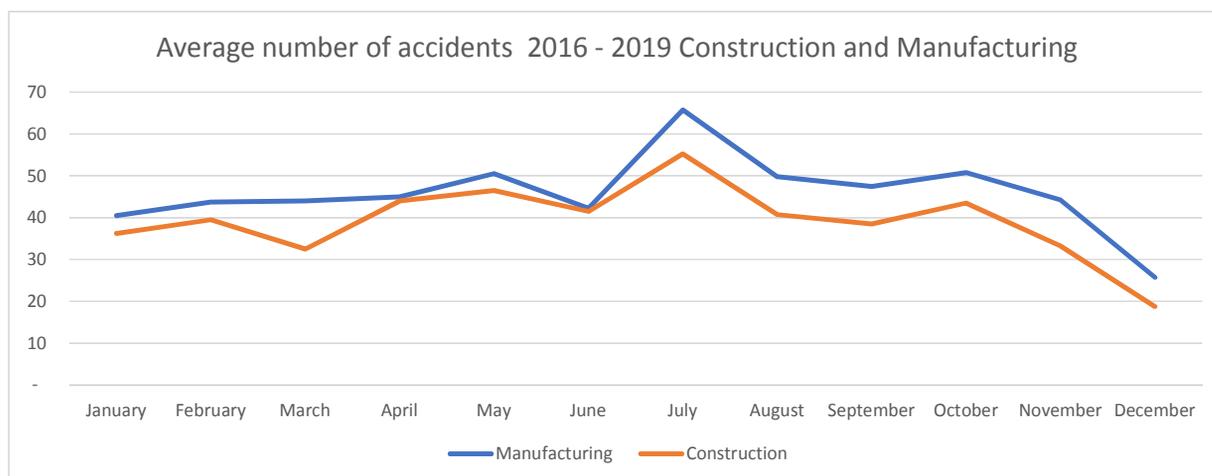
Figure 1: Total accidents at work per economic activity by year



Adapted from NSO – Accidents at work

1.2.2. Through a trend analysis of accidents during the period 2016 to 2019, it results that in summer the number of accidents tend to rise. As shown in Figure 2 below, the number of accidents in both manufacturing and construction industry spike in July.

Figure 2: Average number of accidents by month during the period 2016 – 2019 in the Construction and Manufacturing industries



Adapted from NSO – Gainfully occupied Population

NSO – Accidents at Work

1.2.3. Despite that the manufacturing sector records the largest amount of accidents in absolute terms, per capita rates once again put the construction industry in first place. This was calculated by taking the number of accidents in the respective industry against the respective number of Gainfully Occupied Population (GOP) figures as shown in table 1 and figure 3.

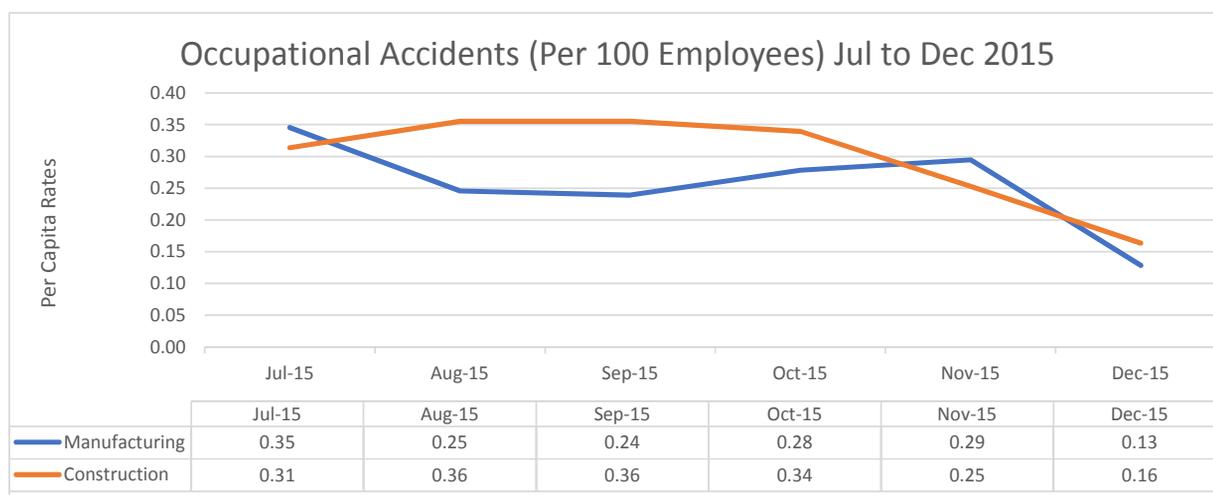
Table 1: Accidents Rates per Capita in the Construction and Manufacturing Industries

Quarter	Manufacturing				Construction			
	Quarterly Accidents	Average Quarterly GOP	Quarterly Rate	Average Monthly rate	Quarterly Accidents	Average Quarterly GOP	Quarterly Rate	Average Monthly rate
Q3 2015	196	23,586	0.83	0.28	124	12,104	1.02	0.34
Q4 2015	164	23,365	0.70	0.23	92	12,189	0.75	0.25
Q1 2016	137	23,526	0.58	0.19	104	12,311	0.84	0.28
Q2 2016	149	23,732	0.63	0.21	145	12,434	1.17	0.39
Q3 2016	159	23,867	0.67	0.22	141	12,542	1.12	0.37
Q4 2016	134	23,717	0.56	0.19	83	12,606	0.66	0.22
Q1 2017	140	23,913	0.59	0.20	110	12,837	0.86	0.29
Q2 2017	130	23,947	0.54	0.18	132	13,131	1.01	0.34
Q3 2017	169	24,241	0.70	0.23	150	13,304	1.13	0.38
Q4 2017	113	24,308	0.46	0.15	93	13,321	0.70	0.23
Q1 2018	123	24,593	0.50	0.17	125	13,489	0.93	0.31
Q2 2018	134	24,965	0.54	0.18	124	13,814	0.90	0.30
Q3 2018	163	25,108	0.65	0.22	121	13,993	0.86	0.29
Q4 2018	122	24,960	0.49	0.16	112	14,265	0.79	0.26
Q1 2019	113	24,951	0.45	0.15	94	14,791	0.64	0.21
Q2 2019	138	25,048	0.55	0.18	127	15,425	0.82	0.27
Q3 2019	161	25,303	0.64	0.21	126	15,998	0.79	0.26

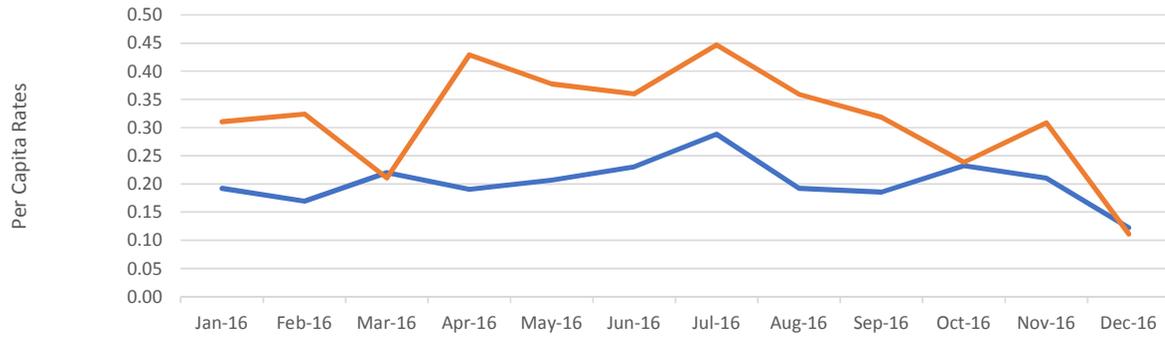
Adapted from NSO – Gainfully occupied Population

NSO – Accidents at Work

Figure 3: Accidents Rates per Capita in the Construction and Manufacturing Industries



Occupational Accidents (Per 100 Employees) 2016



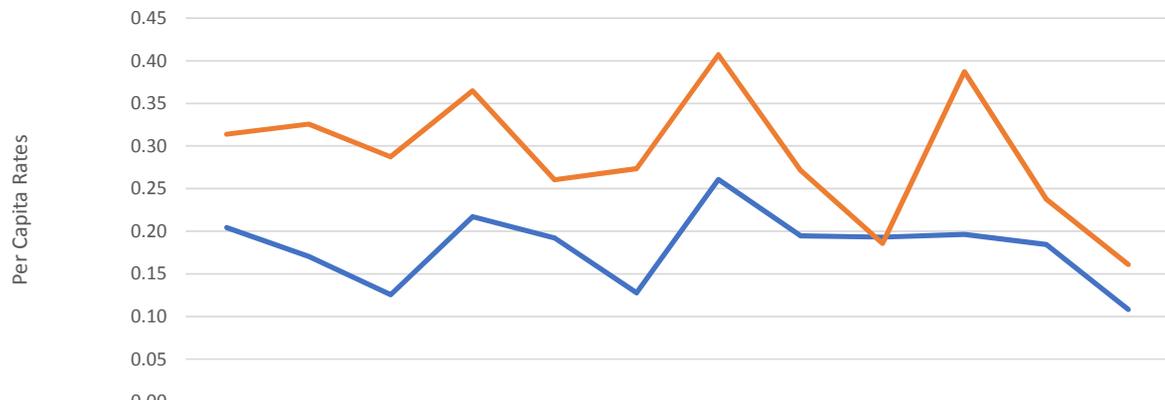
	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16
Manufacturing	0.19	0.17	0.22	0.19	0.21	0.23	0.29	0.19	0.19	0.23	0.21	0.12
Construction	0.31	0.32	0.21	0.43	0.38	0.36	0.45	0.36	0.32	0.24	0.31	0.11

Occupational Accidents (Per 100 Employees) 2017

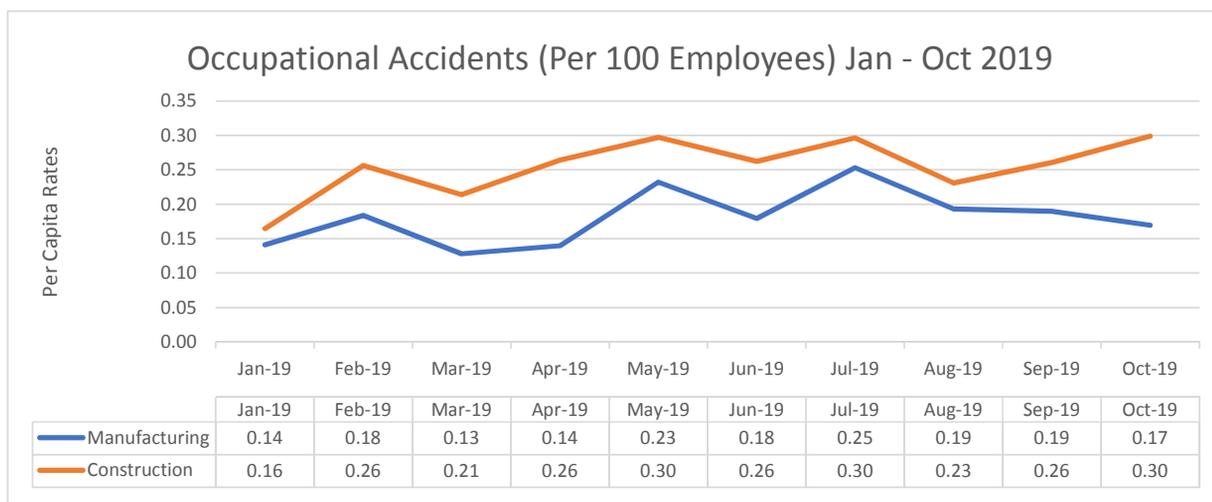


	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17
Manufacturing	0.13	0.20	0.25	0.19	0.20	0.15	0.26	0.23	0.21	0.23	0.14	0.09
Construction	0.32	0.28	0.26	0.25	0.43	0.32	0.46	0.32	0.35	0.30	0.27	0.13

Occupational Accidents (Per 100 Employees) 2018



	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18
Manufacturing	0.20	0.17	0.13	0.22	0.19	0.13	0.26	0.19	0.19	0.20	0.18	0.11
Construction	0.31	0.33	0.29	0.36	0.26	0.27	0.41	0.27	0.19	0.39	0.24	0.16



Adapted from NSO – Gainfully occupied Population

NSO – Accidents at Work

The Occupational Health and Safety Authority

- 1.2.4. The Occupational Health and Safety Authority is given legislative powers through the Occupational Health and Safety Act, Cap. 424. While this act was published in the year 2000, the establishment, functions, conduct and other terms of the authority were brought into force in 2002. According to this Act, the OHS “shall be responsible for ensuring that the physical, psychological and social wellbeing of all workers in all workplaces are promoted and to ensure that they are safeguarded by whoever is so obliged to do”. The Authority, is composed of a tripartite Board as well as of an Executive Body. Figure 4 lays out the organisation structure for OHS’s Executive Body.
- 1.2.5. This Authority currently falls under the remit of the Ministry for Health, and was voted with an approved estimate amounting to €1,390,000 from public funds for the year 2020. While the nine-member Board is assigned with discussing strategies and policies as well as providing advice to the incumbent Minister, the Executive Body’s functions mainly consist of the general implementation of the provisions outlined in the OHS Act, as well as carrying out any duties and responsibilities as may be prescribed or assigned to them by the Board. More, specifically, the executive branch of the OHS is responsible for:
- (i) applying the provisions of this Act and of any related regulations;
 - (ii) establish strategies in consultation with the Chief Executive Officer, by which the general national policy relating to OHS, indicated to it by the Minister, may be implemented;
 - (iii) advise the Minister regarding the making of regulations to promote, maintain and protect a high level of OHS;
 - (iv) monitor compliance with relevant OHS legislation and to take enforcement action;
 - (v) prepare regulations or Codes of Practice required to promote, maintain and protect a high level of OHS: Provided that the Authority may appoint for this purpose, committees or sub-committees and it may coopt on such committees or sub-

committees competent persons from outside its membership, who, in the opinion of the Authority, have professional or expert knowledge on any matter dealt with under this Act; so however that the co-opted members shall not have a vote on any matter before a committee or subcommittee;

- (vi) promote the dissemination of information regarding OHS, and the methods required to prevent occupational injury, ill health or death;
- (vii) promote education and training on OHS, and emergency and first aid response at workplaces;
- (viii) collate and analyse data and statistics on occupational injuries, ill health and deaths, and on matters ancillary to OHS: Provided that the Authority may request data or information on any matter related to OHS, and such data or information shall be provided forthwith: Provided further that any such data or information shall be deemed to have been given and received under the obligation of confidentiality;
- (ix) keep registers of such plant, installations, equipment, machinery, articles, substances, or chemicals and intended for use at work which in the opinion of the Authority provide a serious OHS risk;
- (x) carry out any investigation on any matter concerning OHS, including but not limited to the investigation of any accident, injury, disease or death occurring as a result, or by reason of, any association with work, as well as investigations to ascertain the level of OHS provided at any work place, and the duty of the Authority to secure the enforcement of any provision of this Act shall not be reason to debar the carrying out of such investigations: Provided that the Authority may appoint competent persons as far as possible from the register to assist it in any investigations and to accompany its officials during an investigation;
- (xi) promote and carry out scientific research aimed at better methods of preventing occupational ill health, injury, or death;
- (xii) keep registers of persons competent to give advice on matters related to OHS: Provided that the Authority may determine the minimum qualifications required before the name of a person may be entered into the register.

Source: OHS Act

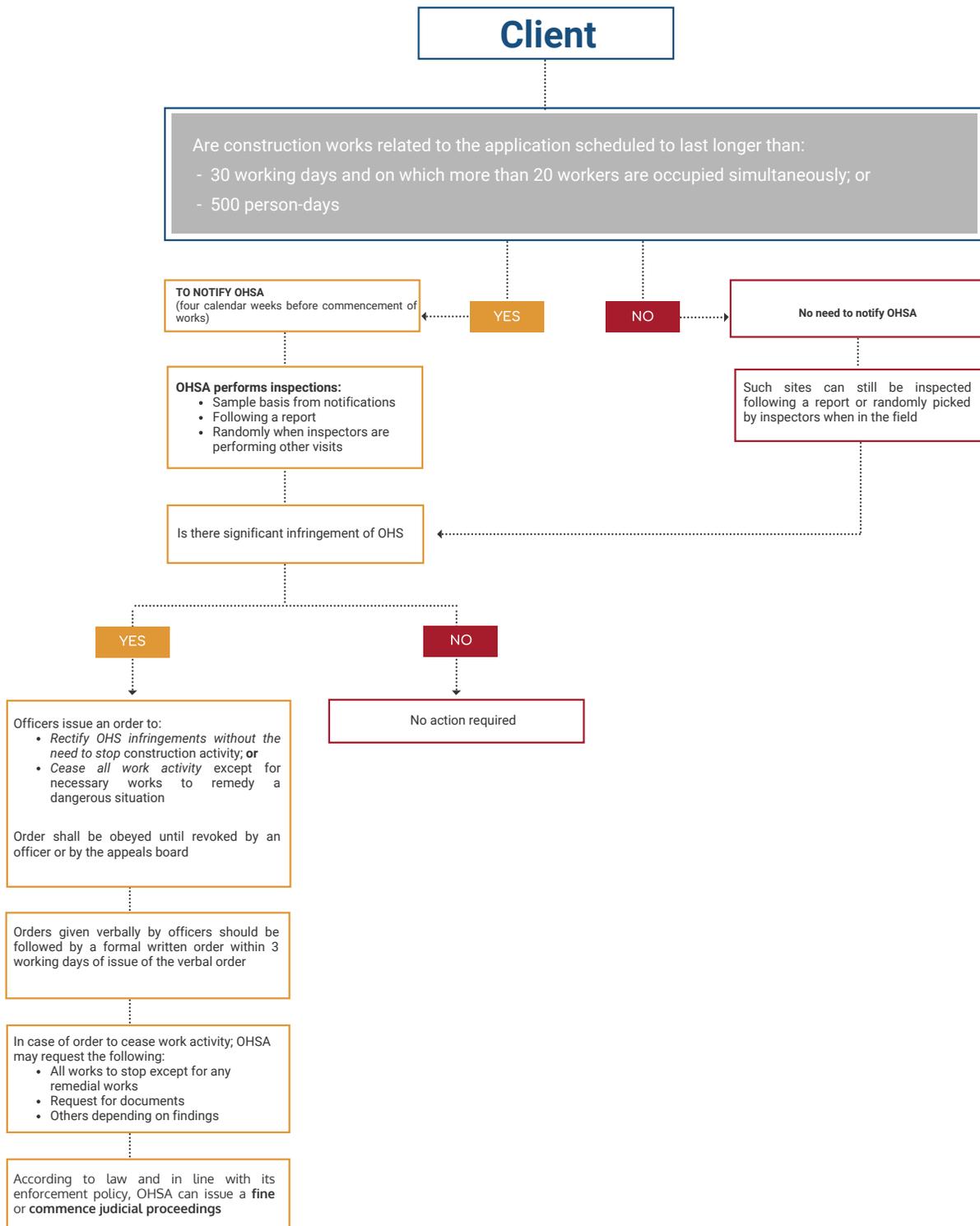
- 1.2.6. NAO considers OHS's inspectorate function as one of the Authority's most important. Given that this publication will be following-up on the 2016 recommendations which were primarily targeted at this role, Figure 5 below illustrates the process adopted by this entity insofar as inspections on construction sites are concerned.

Figure 4: OHSA's organisation structure



Source: OHSA

Figure 5: The Process – From Notification to Inspection



1.3. Audit Scope and Objectives

- 1.3.1. This publication is a direct follow-up of the 2016 study and will therefore once again be solely scoped on the construction industry. Unless otherwise stated, this study covers the Authority's operational period between January 2016 and December 2019, and all findings are as at May 2020.
- 1.3.2. This audit was purely scoped to be a performance evaluation of OHSA's operations and, consequently, any assessment on financial compliance was scoped out.
- 1.3.3. The objective of this exercise is to determine progress, or otherwise, registered by the OHSA in implementing the recommendations set in the 2016 report.

1.4. Methodology

- 1.4.1. As a first step, the recommendations made in the 2016 study were compiled in a list and re-sent to the auditee so that the latter could report on progress of implementation accordingly. This feedback was duly analysed and a way forward for further verification was set.
- 1.4.2. Semi-structured interviews were held with OHSA management to further discuss feedback and points of clarification. Supporting documentation was correspondingly requested and analysed as required. Amongst others, a sample of 32 files kept by OHSA on inspections carried out by its officials during period January 2016 to December 2019, was selected and reviewed.
- 1.4.3. The audit team planned to accompany OHSA officers during site visits on construction sites to observe how these are carried out, as well as to attend court sittings for the same purpose. This Office was however not in a position to conduct such inspection visits, nor attend court sittings as these were scheduled to occur in March and April, which coincided with COVID-19 pandemic in Malta.
- 1.4.4. The draft follow-up report presenting NAO's findings and conclusions was forwarded to the respective auditees for their feedback prior to publication of this report. An exit conference was also held in which this feedback was discussed between NAO and the audited entity.
- 1.4.5. The NAO conducted this performance follow-up audit in line with the Standard for Performance Auditing, ISSAI 3000.

1.5. Audit Limitations

1.5.1 This audit exercise was initiated in January 2020 and a relatively standard approach as usually adopted by this Office was envisaged, particularly when it came to planning fieldwork. As already stated however, the scheduled fieldwork coincided with the start of the COVID-19 pandemic in Malta. This situation forced the audit team to forgo most of its planned on-the-ground work, which was mainly intended for observation and substantiation purposes. This means that the assessment on progress of the recommendations in question could only be based on the feedback provided by the Authority, meetings held with latter's management and the review of supporting documentation.

1.6. Report Structure

- 1.6.1. **Chapter 1** – This chapter presents a follow-up on the occupational health and safety (OHS) situation in Malta from that reported upon in NAO's 2016 publication, together with an insight on occupational accidents across all local industries. The audit's scope, objectives and methodology utilised to complete this follow up and required analysis are also laid out, together with a synopsis for both of the report's chapters.
- 1.6.2. **Chapter 2** - This chapter highlights progress, or lack thereof, registered by OHSA in implementing the recommendations presented in 2016 NAO audit report. Specifically, each section lays out the respective 2016 recommendation, identifies progress, and presents additional observations and further recommendations (where applicable).
- 1.6.3. **Chapter 3** - As outlined in Chapter 1, the completed report was forwarded to the audited entity for feedback prior to publication. While certain points raised by the Authority were agreed upon and integrated in the report proper, other views remained in contrast to NAO's opinion. This chapter presents the more salient of these views, as forwarded by OHSA, which were not included in the report proper.

Chapter 2

Follow-Up Report

This chapter highlights progress, or lack thereof, registered by OHSA in implementing the recommendations presented in 2016 NAO audit report. Specifically, each section lays out the respective 2016 recommendation, identifies progress, and presents additional observations and further recommendations (where applicable).

2.1. OHSA's Operational Philosophy

2.1.1 *This Office recommends that OHSA reviews its mission statement so that it better reflects the role of an autonomous regulatory authority. NAO further urges the Authority to re-align its focus and operating philosophy by further consolidating its primary role as an enforcer and a regulator, rather than aiming for the achievement of a self-regulating system. These recommendations become especially pivotal in view of the widespread cultural disregard and lack of adherence to OHS standards within the local construction industry.*

Developments: **Not Accepted**

2.1.1.1 During meetings with the Authority, the audit team noted that the former retains its position as that observed in 2016 as it reasserted that, contrary to public perception, OHSA's primary role is not solely limited to the monitoring of compliance with relevant legislation. In fact, NAO observed that in OHSA's 2019 annual report, while asserting that the Authority "*considers enforcement as one of its key core functions since it ensures that duty holders adequately control risks at their place of work*", it still emphasises that "*the only way by which health and safety in the workplace will improve is if the process is self-regulating i.e. the employers themselves recognise that it is in their best interests to provide their workforce with a healthy and safe environment, while workers understand the need to cooperate with their employer in the preventive and protective measures that are required to be taken*". In this respect, OHSA insists that it wants to project an image of not solely being a controlling regulator but also that of a collaborator.

NAO Observation

2.1.1.2 NAO does not contend the fact that OHSA has a number of roles and responsibilities that it needs to give adequate attention to. This Office also acknowledges that a system of self-regulation within the industry is an ideal scenario. Notwithstanding, and particularly

due to the fact that the per capita accident rate still remains highest in the construction industry, NAO reasserts that the Authority's regulatory and enforcement functions remain a primary priority to achieve culture change in the local construction industry.

2.2. OHSa's Operational Environment

2.2.1. Given the obvious and significant benefits that could emanate from *including reference to the OHSa Act and related legislation (and consequently to the obligations of the duty holder) in either MEPA's development applications or approved permits*, NAO recommends that OHSa does its utmost to bring MEPA on board on this initiative.

Developments: Fully Implemented

2.2.1.1. OHSa informed NAO that discussions were held over several months with the Planning Authority (formerly MEPA) and the Parliamentary Secretary for Planning Reform to include reference to OHS obligations in the notification of development permit application report. This Office was informed that agreement was reached and an article stating conditions imposed by OHSa is now included in the terms and conditions section of the same notification.

2.2.1.2. NAO reviewed a typical 'Notification of Development Permit Notification Report and Commission Meeting Date' and noted that excerpts from the OHSa Code of Practice were included in the notification under the sub-heading 'Conditions imposed and enforced by other entities'. Specifically, through this insertion the applicant is informed that he/she has a duty to appoint a competent Project Supervisor (PS) for the design and the construction stage and that the applicant's responsibilities shall include:

- To keep a health and safety file for the design stage and draw up a plan, setting the respective applicable health and safety rules to the construction developments concerned. This shall include measures to ensure cooperation between the different contractors and any measures concerning occupational risks foreseen on site.
- To notify the OHSa at least 4 calendar weeks before commencement of works in cases whereby construction is scheduled to last longer than 30 working days and in which more than 20 workers are occupied simultaneously or work is expected to exceed 500 working days.

NAO Observation

2.2.1.3. This Office positively notes that its 2016 recommendation in this respect was addressed. NAO is of the opinion that such information provided in a timely manner will avoid misunderstandings related to the approach to be adopted by the client in proceeding with a construction project.

2.2.2. *With respect to the challenges OHSA faces when attempting to obtain pivotal information from other government entities, **NAO urges the Authority to enforce its legal rights and unrelentingly request any information which it would require to adequately shoulder its responsibilities.** Once again, should such measures yield unfavourable outcomes, this Office recommends escalation of the matter through the appropriate channels.*

Developments: No Longer Applicable

2.2.2.1. During meetings with the audit team, the Authority asserted that challenges to obtain information from other government entities as reported in the 2016 NAO publication, did not persist since no reoccurrences were experienced. OHSA therefore considers this issue as no longer applicable.

NAO Observation

2.2.2.2. This Office positively notes that similar incidents did not occur since the 2016 publication. Notwithstanding, NAO still encourages the Authority to determinedly enforce its legal right to access applicable information should such an incident materialise once again

2.2.3. *Given the widespread problem of clients not engaging PSs to ascertain OHS requirements adherence during a construction project, NAO questions whether the legal requirement to appoint PSs should lie with this duty holder given the high risk that this stakeholder is not conversant with the practices of the construction industry as well as with any OHS related legal requirements. In view of this, **NAO recommends that OHSA should explore the possibility of soliciting, through the appropriate channels, for a shift in the legal responsibility of appointing PSs from the client to other, more technically and legally conversant stakeholders.** More specifically, NAO opines that the legal responsibility of appointing a Project Supervisor Design Stage should lie with the designers, engineers and/or architects, while the obligation of engaging a Project Supervisor Construction Stage should be assigned to the contractor.*

Developments: Partly Implemented

2.2.3.1. The legal considerations of appointing a PS for a construction project is laid out in LN 88 of 2018 of the laws of Malta, titled 'Work Place (Minimum Health and Safety Requirements for Work at Construction Sites) Regulations 2018'. NAO notes that, through this legislation, the client still is the stakeholder who is responsible to appoint a PS for the design and execution of a such an endeavour. This legislation further points out that, if the client fails to appoint a PS, the client him/herself will be deemed to be the PS.

2.2.3.2. Notwithstanding the above, and in contrast to the situation in 2016, LN 88 of 2018 allows for the concept of a ‘Domestic Client’. Specifically, it states that the above-mentioned obligations (along with others) do not apply only if the following conditions are met:

- The project in question does not require the fulfilment of the construction notification form (as highlighted in Figure 3);
- Only one contractor for the whole project will be present on site; and
- Works do not involve particular risks as listed in Schedule 2 of the same legislation.

2.2.3.3. In reconfirming whether the spirit of NAO’s original recommendation still holds, the audit team referred to EU Council Directive 92/57/EEC, which deals with the minimum safety and health requirements at temporary or mobile construction sites. In first instance, it is to be clarified that the definitions of this Directive differ from those quoted in local legislation. Specifically, a number of duties which are assigned to the PS in local legislation are allocated to an individual with the designation of ‘Coordinator’ in the Council Directive. On the other hand, the designation ‘Project Supervisor’ in this Directive refers to an individual who, while retaining a number of responsibilities as assigned to the PS in the local scenario, is also to act between the client and the ‘Coordinator’.

2.2.3.4. The definition of a ‘Project Supervisor’ as per Council Directive is ‘any natural or legal person responsible for the design and/or execution and/or supervision of the execution of a project, acting on behalf of the client’. The audit team notes that this definition may be interpreted as referring to an architect (that is, a natural or legal person responsible for the design or supervision of the project) or a contractor (that is, a natural or legal person responsible for execution of the project). This Directive further states that the ‘Coordinator’ can be appointed by the client or the ‘Project Supervisor’. This implies that the NAO recommendation in 2016, namely that of shifting the responsibility of appointing a PS from the client to the architect or contractor in the local scenario, is perfectly in line with what is permissible in EU Council Directive 92/57/EEC.

NAO Observation

2.2.3.5. While this Office acknowledges the introduction of the ‘Domestic Client’ consideration in local legislation, it also points out that, unlike the situation in 2016, there now could be construction projects that are legally not at all supervised by PSs. NAO also observes that such exempted projects do not carry the requirement for OHSA to be notified of their execution. In NAO’s opinion, this creates a double vacuum, whereby OHSA has limited visibility on the incidence of these projects and the fact that they are also not supervised by the expertise of a PS. While this Office understands that LN88 of 2018 limits these instances to projects which do not feature major risks, it still perceives the possibility of OHS related infringements being less likely to be detected, thereby creating potential for accidents to occur.

2.2.3.6. Notwithstanding, NAO observes that in cases in which a PS still has to be appointed, the situation remains practically unchanged from that reported upon in the 2016 report. While once again acknowledging that through the implementation of recommendation 2.2.1 above the client may be better informed of his/her OHS related legal obligations, the responsibility to appoint a PS is still entrusted to this stakeholder who potentially would not be conversant and proficient with all practices and legal requirements of the construction industry, thereby creating obvious risks.

2.2.4. *NAO also notes that by shifting the legal responsibility of appointing PSs from the client to more technically and legally conversant stakeholders (as outlined in recommendation 2.2.3 above), risks of PSs deceptively binding themselves to only one of the two stages due to lack of knowledge by clients, would be mitigated. However, should recommendation 2.2.3 not be taken on board, **NAO recommends that OHSAs devise a basic contractual template for the engagement of a PS (to be signed by the client and the assigned PS).** This document would better furnish the client in ascertaining that the PS is contractually binding him/herself to shoulder responsibility for both the design and construction stages, thereby minimising to previously mentioned risks. While this template itself should be made freely available to the public, it could also include reference to other material that is also made available to the public so that abuse of PSs charging for this free documentation is minimised. For the sake of effective control and enforceability, the onus and legal responsibility of using this template in forming a contractual agreement, should fall on the PS and failure to do so should put the latter liable to an AF. NAO further opines that this measure can only be successfully implemented if followed by effective monitoring by OHSAs.*

Developments: No Longer Applicable / Not Accepted

2.2.4.1. NAO notes that LN 88 of 2018, calls for one PS to shoulder responsibility for both stages of the construction project. This addresses NAO's 2016 concern of ill-intended PSs deceptively binding themselves to only one of these two stages by taking advantage of lack of knowledge by clients. Nonetheless, the Authority was asked whether it still considered formulating a template to guide clients in drafting adequate contracts for the engagement of PSs. In reply to this, the Authority asserted that it considers such a contract as a civil matter and that it therefore should not intervene.

NAO Observation

2.2.4.2. NAO positively acknowledges that LN88 of 2018 addresses NAO's primary concern in this respect. Nonetheless, while agreeing that OHSAs should not intervene in a civil matter such as that of the appointment of a PS by a client, this Office still perceives benefits if the Authority could devise a template, and make it publicly available, so that it could serve as a guide unto which such agreements are based. This Office however acknowledges that, rather than being a legal obligation (as implied in the 2016 recommendation) this template should merely serve as an example of good practice in relation to how such agreements should be drafted.

2.2.5. NAO urges OHS to proactively offer BICC any required assistance so that OHS considerations in the modules leading to the fulfilment of the skills card are comprehensively covered. NAO additionally recommends that all prospective workers should fulfil the requirements to obtain this card as part of their development programme. Furthermore, all current workers should be obliged to obtain this certification within a stipulated time-period. This Office also suggests that any worker engaged in this industry should be obliged to carry this skills card on his/her person during works as assurance of the worker's competence and knowledge, including on OHS requirements. Operating in the construction industry without attaining and carrying this card upon one's person, should subject the infringer to enforcement action.

Developments: Insignificant Progress

2.2.5.1. The Authority asserted with the audit team that it has consistently taken a very active role with BICC on the inclusion of OHS related aspects in the skill cards' curriculum. To this end, NAO requested supporting documentation which substantiate this claim. While the Authority did send copies of communication between itself and BICC, these were fragmented pieces of information spanning over multiple years. To this end, while the audit team can ascertain that communication between these two entities occurred, it cannot evaluate the extent nor the full purpose of such collaboration. Notwithstanding, NAO observes that, as at time of writing of this report, the acquisition of the skills card remains non-compulsory. This indicates that, irrespective of the extent of cooperation between OHS and BICC, NAO's 2016 recommendation in this respect has as yet to be implemented.

NAO Observation

2.2.5.2. NAO once again reasserts its opinion that collaboration between OHS and BICC is indispensable so that applicable OHS considerations are comprehensively covered in the skills card scheme. However, given that this Office cannot ascertain whether adequate collaboration prevails or otherwise between these two entities due to the fragmented documentation received, it had no option but to assign this recommendation with a status of 'Insignificant Progress'. In addition to the above, NAO remains concerned with the fact that, as at time of writing, the skills card remains non-compulsory and consequently, its obvious benefits remain unsecured.

2.2.6. While agreeing with the Authority that the modules delivered by MCAST should be kept constantly abreast with ongoing OHS developments considerations, NAO suggests that OHS explores the possibility of being more actively involved in the design, planning and possibly the delivery of these modules' curricula. To this end, NAO recommends that the Authority liaises with MCAST, thereby lending its expertise to ensure that comprehensive and streamlined OHS standards are included across all vocational programmes. Furthermore, the Authority could keep an open channel of communication with this College so as to provide any emerging new material and information.

Developments: *Not Implemented*

- 2.2.6.1. The Authority asserted with NAO that it cooperates with other entities, including MCAST, on a number of initiatives related to the educational aspect of OHS. The Authority however firmly pointed out that notwithstanding that it provides advice as required, the accreditation of training courses does not fall within the remit of OHSA.
- 2.2.6.2. NAO requested evidence of such collaboration, specifically with MCAST, but none were forwarded to the audit team as at time of writing.

NAO Observation

- 2.2.6.3. Even if OHSA highlighted its collaboration with MCAST, NAO cannot verify this claim as no supporting documentation was received by the audit team. The audit therefore had no choice but to assign 'Not Implemented' as this recommendation's development.

2.2.7. *NAO suggests that OHSA engages in communication with the Police Force and the Attorney General's Office to explore possibilities of inter-departmental training opportunities for better coordination in the preparation leading up to, and during the actual Court proceedings.*

Developments: *Fully Implemented*

- 2.2.7.1. During meetings with the audit team, OHSA asserted that discussions were held with the Police force as well with the Attorney General's Office, which led to the betterment of the work dynamics between these entities. The Authority further highlighted that the Attorney General's Office has directed one of its lawyers to work closely with OHSA for better mutual understanding and to serve as a point of reference should legal difficulties arise.

NAO Observation

- 2.2.7.2. NAO positively notes that issues highlighted in the 2016 report seem to have been resolved by the Authority. Better communication with such stakeholders undoubtedly leads to the OHSA being in a stronger position in tackling operational and judicial proceedings.

2.3. OHSa's Resources

2.3.1. *In view of the fact that OHSa may not have sufficient human and financial resources to adequately execute its monitoring function, this Office recommends that the Authority should initiate an internal exercise to determine whether its current staff complement and financial allocation are being utilised to their full potential and address any identified inefficiencies. OHSa could also simultaneously conduct a simplification review intended to determine whether any existing processes could be simplified or automated (such as inspectorate staff making use of portable electronic devices during site inspections to maximise time efficiency on data inputting processes). Any man-hours alleviated through such processes could be assigned to additional on-the-ground monitoring thereby further strengthening the Authority's regulatory function. OHSa could also explore the possibility to tap further into EU funding, especially insofar as training and collaboration with European counterparts are concerned, thereby enhancing its personnel's expertise and capabilities. Furthermore, NAO also draws attention to the fact that, in adopting a zero-tolerance approach towards enforcement on identified infringements, the Authority could generate additional revenue, thereby putting itself in a better position to fulfil its obligations. This Office however further recommends that, should the Authority determine that even after the above suggestions are fully implemented it is still not adequately resourced to comprehensively address its responsibilities, the latter would do well to solicit for additional resources through the appropriate channels.*

Developments: Insignificant Progress

- 2.3.1.1.** During meetings with the audit team, OHSa contended that, similarly to the 2016 situation, it is still suffering from a significant and chronic lack of resources. This Office is in receipt of an HR plan which was compiled by the Authority in 2018. This document outlines what OHSa perceived as additionally required, both in terms of human resources as well as additional financing to reflect this increase in personnel. In this 2018 plan, the Authority estimated that it required forty-one additional staff, 24 of which were intended to serve as OHS Officers, 6 as Specialist Officers and 11 others to fulfil various other competences at different levels. NAO notes that in this document, the Authority calculated that these would absorb €813,743 in salaries and €1,013,500 in other supporting expenditure which, among others, include workstations, car lease agreements and the purchase of three additional premises.
- 2.3.1.2.** While NAO notes that these additional requests are substantial, it will not delve into the merits of whether the resources requested through the above-mentioned plan were justified or otherwise, particularly as this Office is informed that these were never approved by the OHSa Board and that the process of acquiring additional resources was still ongoing as at time of writing. In this respect, NAO observes that OHSa issued a tender in May 2019 for the formulation of a business plan intended to maximise its human and financial resources as well as to identify additional resources that are

essential for it to continue to offer its services while also exploring other development areas. Notwithstanding, OHSA informed NAO that as at time of writing of this report, this business plan is still to be received from the engaged third-party, and that work on it has slowed down due to the COVID-19 pandemic.

NAO Observation

2.3.1.3. NAO acknowledges that the Authority may not be sufficiently staffed to adequately address the wide spectrum of inspectorate areas under its remit. While positively noting that efforts have been made so that its resources are bolstered to better shoulder these responsibilities, this Office however remains concerned that, as yet, no comprehensive internal review was completed in order to identify any potential operational or administrative inefficiencies and consequently determine a more accurate measure of what additional resources are required.

2.3.2. *Given that measuring staff performance (through KPIs) is an obvious and fundamental organisational function for any entity, NAO urges OHSA to reinitiate negotiations with the respective Union as well as directly with its employees and assert the need for such a measure to be implemented.*

Developments: **Significant Progress**

2.3.2.1. During meetings with the audit team, OHSA re-confirmed that there have been issues with the introduction of KPIs. Nonetheless, OHSA asserted that these have been included in discussions held with the concerned Unions and that the Authority widened its collection of data on a quarterly basis to determine any areas of improvement. NAO was additionally informed that the Authority considers itself as a small entity and that this size enables management to easily identify low performers and address any shortcomings mainly through formal discussion.

2.3.2.2. Notwithstanding, OHSA asserted that it included general KPIs on an organisational level as opposed to individual ones assigned to each employee. To verify such claims, NAO requested from the Authority a list of KPIs as set by itself and any supporting documentation which indicated whether these were achieved or otherwise. In reply, the Authority forwarded what it refers to as the 'Work Plan 2019-2020' within which, NAO observed, are listed a number of strategic objectives categorised in five main areas, namely: Legislation, Compliance and Enforcement; Capacity Building; Communicating the benefits of OHS; Taking appropriate action against existing and emerging risks; and Evaluating effectiveness of actions taken. This Office is also in receipt of a spreadsheet which contains information on various aspects of the Authority's operations which amongst others include: inspections carried out after hours; administrative fines collected; convictions obtained; and sick leave availed of.

NAO Observation

2.3.2.3. While this Office only received the requested information on KPIs at a point in which the audit was considered completed, and could therefore not review it in depth, it positively acknowledges that the 'Work Plan 2019-2020' is a significant step in the right direction for the Authority to internally assess its performance.

2.4. OHSA's Operations

2.4.1. NAO urges OHSA to engage in a comprehensive revamp of its information system so that this may better serve the Authority in its operational processes. A central holistic database with clear auditable trails, is a necessity to ensure proper monitoring and consistent enforcement which form the backbone of a solid regulatory function.

Developments: *Insignificant Progress*

2.4.1.1. During meetings with the audit team, OHSA management highlighted that an external contractor was engaged to draw up a Business and Technical Requirements Specifications Document for the implementation of an electronic Management Information System (MIS). In this regard, the Authority forwarded to NAO a documented proposal drafted by the engaged third-party, which was presented to OHSA in January 2019.

2.4.1.2. While this Office did not carry out an in-depth analysis on the comprehensiveness of the forwarded proposal, a cursory review showed that this document did cover a wide spectrum of OHSA's operations, both those related to external on-the-ground work, as well as those being more administrative in nature. Furthermore, as evidenced by NAO in its review, this report mentions that the Authority currently relies heavily on paper, makes extensive use of MS Excel to keep data in the absence of a proper business database system, lacks automation, risks data duplication and data inconsistencies and even lacks reporting mechanisms. NAO observed that according to this proposal, an MIS to mitigate these shortcomings would require approximately €250,000 in a capital injection with an additional €15,000 to €23,000 of recurring annual costs.

2.4.1.3. OHSA management asserted that it has the intention to launch a call for tenders for the provision of an integrated MIS. However, as at time of writing, this has yet to materialise as no funds have been made available. The Authority highlighted that the costs involved are substantial and cannot be covered by its annual recurrent injection of funds allocated by central Government.

NAO Observation

2.4.1.4. As various parts of this audit report attest, the expedited implementation of a fully-fledged MIS is of pivotal importance so that OHSA can shoulder its regulatory functions more comprehensively and in a much more efficient manner. To this end, this Office remains concerned with the fact that notwithstanding the need for such a system is

explicitly evident, the required resources are as yet to be made available for this system's acquisition and implementation.

2.4.2. *Given the significant problem of under-reporting of actual occurring accidents, NAO recommends that the Authority revisits its position on its visibility of near misses. To this end, NAO recommends that OHSA solicits, through the appropriate channels, a change in local legislation to bind the relevant duty holders to comprehensively document near misses. Following this, this Office urges the Authority to actively extract samples of this documentation so that it enhances its own information base, thereby putting itself in a better position to take a more pro-active and effective approach to its monitoring system. NAO draws attention to the Seveso Directive which recommends the reporting of near misses, even though such reporting is, as yet, not compulsory. This recommendation draws further strength from a study published by the European Process Safety Centre (EPSC), entitled 'Benchmarking on EPSC Member Company – Incident Reporting System', which recognised that 'near-miss reporting was key to improving safety performance'. This EPSC study further affirms that, 'companies can learn from their near-misses without having to suffer the consequences of a full accident. Focusing on the reduction of near-miss occurrences, through stimulating near-miss reporting, has been shown to reduce frequency of accidents.'*

Developments: Not Accepted

2.4.2.1. OHSA sustains that, while it is an ongoing process for them to devise and implement alternative methods that would streamline the Authority's effectiveness, making the notification of near misses compulsory was not considered. Although the Authority acknowledges the current construction situation in Malta, it insists it would be a bureaucratic burden if all near misses are to be reported and consequently processed.

NAO Observation

2.4.2.2. NAO still maintains that the Authority could only benefit if it had visibility on near misses as these may be profiling indicators which highlight where risk of OHS related accidents are more likely to occur. Notwithstanding, NAO acknowledges that without an adequate electronic system, the receipt and processing of such voluminous information could be overwhelming for OHSA in terms of resources.

2.4.3. *Note: This recommendation has two separate parts to it, which will be dealt with separately, albeit under the same section reference*

*2.4.3.(i). A two-pronged approach is recommended to address concerns emanating from the facts that: the notification system is selective in terms of project size; and that the legal obligation of forwarding this notification document to OHSA is not being consistently adhered to by the duty holders. To begin with, **NAO recommends that the notification requirement should not only be limited to the larger projects but rather take a broader dimension**, thereby providing the Authority with increased visibility of all ongoing construction projects. This suggestion becomes especially important due to the potentially significant number of smaller scale local construction sites, and the fact that the number of man-hours required for any project does not, in isolation, statistically correlate to the number of occurring accidents.*

Developments: Not Accepted

2.4.3.1. OHSA asserts that enforcing the submission of the construction notification form for all construction projects would result in a bureaucratic burden, which would require more human resources to process. The Authority highlighted that the thresholds set in the Maltese legislation are based on the same thresholds established by the relevant EU Directive of Construction and that it firmly believes that no extra measures need to be taken beyond what is laid out by this Directive.

2.4.3.2. For context, local legislation (specifically LN88 of 2018 section 5(3)) establishes that a construction notification form needs to be submitted to the Authority if work is scheduled to last longer than 30 working days and on which more than 20 workers are expected to be deployed simultaneously, or if the project is scheduled to exceed 500 person-days. NAO confirms that this is a direct transposition from EU Council Directive 92/57/EEC. However, this Office highlights that this Council Directive (as specified in its title) sets out the minimum health and safety requirements. This means that that nothing precludes Member States from setting stricter controls if it is deemed that the situation merits so.

NAO Observation

2.4.3.3. This Office still maintains that the threshold for a construction notification form to be sent to OHSA may be too high for the local scenario. Specifically, NAO contends that a significant portion of local construction projects would not satisfy these set criteria and consequently, the obligation of notifying OHSA of their occurrence would not apply. This means that the Authority has no means whatsoever to obtain any clear visibility on the occurrence of such projects and that without such information, any approach to include these in OHSA's inspectorate effort would be mostly unstructured and largely uninformed. This Office strongly believes that this situation compounds risks of OHS infringements

remaining firmly outside OHSA's inspectorate reach for a significant portion of the local construction industry.

2.4.3.(ii). Secondly, NAO recommends that OHSA explores possibilities by which this notification is made more easily available to the general public. In so doing, the Authority would ensure greater awareness among duty holders of their legal obligation to forward this document to OHSA and consequently, ascertain greater compliance to this same requirement. One possibility by which this notification document could be made more easily available to the duty holders, is through the automation of its dissemination, possibly by including it in already existing government mechanisms (for instance, through the MEPA permit application process). The amalgamation of these two recommendations would ascertain that the Authority has better visibility of ongoing works (and consequently be in a better position to fulfil its regulatory function) without having to endure any significant increase in administrative burden.

Developments: Fully Implemented

2.4.3.4. OHSA has taken on board this recommendation, mainly by converting the Construction Notification Form into an e-form, which can be accessed both from the Government's e-form platform or from the OHSA's website. This e-form can either be filled-in and submitted to the Authority online or can be downloaded and sent to OHSA by email or traditional post. Furthermore, OHSA directed this Office to the change in relevant legislation (specifically LN88 of 2018), which unlike the situation in 2016, now puts the onus for submission of the notification form on the Project Supervisor (PS) rather than the client. The implementation of both changes was confirmed by NAO.

NAO Observation

2.4.3.5. NAO commends the OHSA's initiative to simplify the process of submitting the Construction Notification Form through the introduction of an electronic submission portal. Furthermore, it positively acknowledges the shift of legal responsibility, for the submission of this form, from the client to the PS. In doing so, the onus for such a responsibility now rests with a stakeholder who should be adequately conversant with the legal obligations, thereby mitigating the risk of such forms not being submitted due to one not knowing the required procedures.

2.4.4 *This Office recommends that, should OHSA decide to embark on awareness campaign projects, it reconsiders the communication channels it makes use of in view of the very poor level of interest and uptake by the general public. This Office suggests that the Authority takes due note of current trends in communication so that it utilises media channels and measures which are currently more appealing to the public, thereby ensuring a more effective outreach.*

Developments: *Significant progress*

- 2.4.4.1. The Authority recognises that media interventions are powerful tools by which to raise awareness and promote the importance of managing OHS. In this respect OHSA explained that during the year it devotes time and resources to its awareness-raising initiatives and endeavours to target the widest possible audience. NAO was informed that this is done by the use of social media and through more traditional means such as appearing on TV and radio programmes as well as attending informative seminars. OHSA particularly highlights that attending such programmes in which participation of the general public is possible, gives the Authority opportunity to dispel wrong public perceptions about the precise role of the OHSA.
- 2.4.4.2. NAO can confirm OHSA's relatively healthy presence on TV and radio programmes. Specifically, OHSA provided the audit team with a list of TV and radio programmes to which the representatives from the Authority attended between January 2018 to May 2020. NAO notes that in this period, OHSA made an average 24 appearances in TV and radio programmes per year. This Office however notes that its presence on social media is not as strong. Particularly, the audit team noted that the OHSA Facebook page had garnered 1,200 followers as at time of writing of this report, which when compared to the total population, is a low amount.
- 2.4.4.3. OHSA also highlighted its 2018 initiative of launching a mobile application with the name of 'Bsafe@work'. The Authority asserts that this application is intended to provide users with up-to-date notifications and information, while allowing the lodging of complaints informing OHSA of any potentially risky situations created by any work activity. NAO confirms that, as at time of writing of this report, this application was freely available to the public and was found easy to operate. Nonetheless, the audit team noted that this mobile based application was last updated in May 2018. It was also noted that, as at time of writing, this application only featured nine good practice articles. Similarly to the social media situation, the registered downloads for this mobile application were low, with only 163 downloads as at time of writing this report.
- 2.4.4.4. Further feedback received from OHSA highlighted that in 2019 the Authority launched a tender for the design and implementation of a comprehensive public relations (PR) campaign. Specifically, NAO can confirm that this tender was published and awarded in May 2019. This tender document, titled "Devise and implementation of a public relations plan for the Occupational Health and Safety Authority (OHSA)", was issued with the intent for the Authority to have a structured PR plan and be in a position to reach the following targets:
- Keep the general public abreast with the Authority's functions and responsibilities,
 - Reinforce its professional and technical corporate image,
 - Create good perceptions regarding OHSA and dispel erroneous perceptions which are not based on facts,

- Mitigate the impact of negative publicity,
- Transmit the message that the responsibility for the safeguard of workers' health and safety does not lie with OHSA but with named duty-holders,
- Emphasize OHSA's achievements in the field of occupational health and safety, and
- Foster a solid relationship between OHSA and the media which is based on mutual respect and understanding of the respective roles.

2.4.4.5. A review of the submitted PR Plan showed various initiatives intended for improving the awareness about OHSA amongst the general public. This report clearly identifies weakness that the Authority faces in this respect and presents suggestions how these could be tackled. Amongst others, this Office notes that this proposed PR plan recommends a rebrand for the OHSA and its image. It also recommends the issuance of monthly press releases outlining achievements, as well as the increase of media outreach on online news portals and on social media platforms

2.4.4.6. Notwithstanding the above, the audit team was informed by the Authority that while the completed plan was presented to it in July 2019 by the chosen bidder, further work on this initiative has stalled. This was due to the fact that a meeting for detailed discussion between the author and the OHSA Board had, as at time of writing of this report, yet to be held.

NAO Observation

2.4.4.7. NAO positively notes an evident effort by the Authority to improve its overall PR. This Office however believes that the success of most of these initiatives has been somewhat limited as at time of writing and that intended benefits are yet to be reaped.

2.4.5. *Enforcing OHS should be the primary focus of the Authority, and therefore **this Office strongly urges OHSA to ascertain that health and safety considerations within construction sites are solely entrusted to PSs with certified competence and qualifications.** This, NAO recommends, is only possible through a system in which individuals wishing to act as PSs, subject themselves to vetting by OHSA and, upon approval, be included in the Authority's competent persons' register. Practitioners included in this register should then be the only legally allowable option to be assigned as PSs. This proposed system could greatly reduce the incidence of unqualified PSs, and significantly mitigate risks of having non-competent individuals assume this important role, thereby reducing the overall risk of preventable accidents. Given the benefits which could emanate from this system, NAO urges the Authority to exert the necessary pressure, through the appropriate channels, to amend relevant legislation to effectuate and legitimise this recommendation. This Office further suggests that OHSA could explore the possibility of proposing an amendment to local legislation so that chargeable prices for project supervision services are regulated, thereby greatly mitigating the potential for abuse in that regard.*

Developments: *Not Accepted*

- 2.4.5.1. Similarly to what was reported in 2016, OHSA once again highlighted that it publishes a competent person register on its website. NAO can confirm that OHSA's website features a competent person register which includes 110 individuals who are considered as competent in the general health and safety area by the Authority, even if the contact details of most of these are not made available through this channel.
- 2.4.5.2. The audit team observed that inclusion of an applicant on this register is subject to vetting by the Authority, based on three basic criteria, namely that the applicant:
 - a. is in possession of an academic qualification, obtained at least two years prior to the application - Diploma from the University of Malta (or any foreign institution duly recognised by the UOM) in Health and Safety, or an equivalent qualification certified by MQRIC to be at level 5 or higher in the subject;
 - b. has experience and competence in the field; and
 - c. has engaged in continued professional development since obtaining the qualification.
- 2.4.5.3. OHSA however highlighted that inclusion of a competent person in this register is still optional and therefore the general public can still either appoint someone from this list, or any other individual presenting him/herself as a competent person to act as a project supervisor on a construction endeavour.
- 2.4.5.4. As at time of writing of this report, the Authority asserted that it still retains its position to not consider limiting the appointment of PSs solely to the ones included in the competent person register. It is however important to point out that this decision is based mainly on financial reasons as OHSA acknowledged the proposed concept and indicated to the audit team that the setting-up of such a system was sought in the past. Nonetheless, NAO was informed that limiting PS selection solely to those included in this register will mean that there would have to be a robust accreditation assessment system in place which ensures that these indicated individuals are truly competent persons. OHSA highlighted that such an assessment system needs to come from a body which is extraneous and independent from OHSA and must be duly accredited by the National Accreditation Board (NAB). This requires substantial financial and human resources to implement.
- 2.4.5.5. Notwithstanding the above, the Authority also highlighted the concern that, in reality, proof of competence does not address all risks, particularly as one will also need to factor in diligence in the manner by which a project supervisor performs his duties. Specifically, OHSA asserted that a significantly increased volume of work brings about questions on whether assigned PSs are performing their role diligently which, by itself, may be a considerable contributor to an increase in the risk of the occurrence of accidents.

NAO Observation

2.4.5.6. This Office still maintains that practitioners included in OHSAs competent persons register should be the only legally allowable option for clients seeking to appoint a PS. Such a system would undoubtedly be pivotal in rooting out individuals who, though presenting themselves as eligible options, would not be competent to perform such duties. This being said however, NAO acknowledges that putting a robust accreditation system in place requires substantial resources and that this is a significant barrier to the implementation of such a practice. On the other hand, while this Office also understands that competence has to be accompanied by diligence for a PS to adequately perform his/her duties, it does not consider that challenges presented by the latter should in any way impede the address of the former.

2.4.6. *Note: the following two recommendations, while separately listed in the original report, are both dependent on the same issue, that is, the acquisition and commencement of operations of the MIS (which in itself is tackled in section 2.4.1). To this end, they have been addressed together for the purpose of this follow-up study.*

2.4.6.(i). **NAO recommends that the Authority endeavours to construct a centralised electronic prioritisation system** through which it could systematically select the sites to be subjected to inspection visits. This tool should be intended to adequately determine an inspection sample which reflects the current spectrum of ongoing works, while taking into consideration risks such as the duty holders' track records.

2.4.6.(ii). *Given the possibility that infringers may be disregarding SOs by proceeding with the works during the effective period of this enforcement measure, NAO recommends that the Authority creates a system by which this phenomenon may be addressed. More specifically, this Office opines that a documented profiling system could assist its Officials in identifying individuals who, depending on track records, would be more predisposed to ignore the Authority's orders. Once this system is in place, OHSAs inspectorate staff could guide themselves accordingly and carry out follow-up inspection visits, in a timely manner, on high risk individuals.*

Developments: Not implemented

2.4.6.1. As already discussed in section 2.4.1, as at time of writing of this report the MIS had not yet been acquired and, by implication, neither has the centralised electronic prioritisation system been constructed nor a digital profiling system.

2.4.6.2. In the absence of the MIS, OHSAs is still using a site inspection selection method which is similar to that reported in 2016. Specifically, information received from the Authority established that the adopted sampling method involves picking one in every 20 sites from a compilation listing all received construction notification forms. NAO was also

informed that in selecting sites for inspection, some consideration is given (through the professional judgement of OHSA's officials) to the track record of appointed PSs. These selected sites would then be earmarked for inspection by the Authority's officials. OHSA management however further explained that officials are instructed to inspect a number of other projects which they would meet while en route to or from these selected sites. The Authority additionally pointed out that apart from the process explained above, inspections are also conducted in cases in which reports would have been received by the general public.

2.4.6.3. During meetings with the audit team, OHSA also expressed agreement with the concept of introducing a profiling system to identify project supervisors and/or contractors whose track record is generally negative. The Authority asserted that this would facilitate the identification of high-risk individuals and will assist OHSA officials to focus more on them when selecting constructions sites to inspect, be it both in the first instance or for a follow-up.

2.4.6.4. OHSA Management however further indicated that such a system would only be practical if it was electronically based and integrated in the as yet un-acquired MIS. The Authority further asserted with the audit team that with the current hard-copy based system, a robust profiling system would be very labour intensive and highly inefficient to create and maintain.

NAO Observation

2.4.6.5. NAO still maintains the importance of OHSA having a robust prioritisation electronic system for the selection of sites to be inspected as well as an adequate profiling mechanism. To this end, while acknowledging that these systems would register most efficiency and effectiveness if they were integrated in the aforementioned MIS, this Office remains concerned that no progress was registered in this regard since 2016. Specifically, NAO is of the opinion that till the MIS is secured, OHSA still could have formalised basic electronically managed formulae which would have assisted them in such tasks. These could have been based on readily available and relatively inexpensive data processing software and, once constructed, would have required minimal post-inspection inputting to populate them.

2.4.7. *NAO strongly urges the Authority to start carrying out exhaustive inspections during on-site visits to ascertain the full implementation of OHS considerations while fully reviewing all required documentation (such as risk assessments and health and safety plans), rather than merely ascertaining that OHS structures and mechanisms are in place, while identifying obvious risks. This Office further urges OHSA to comprehensively document all identified infringements through a standard, all-inclusive checklist. This practice, NAO opines, is a fundamental part of the Authority's regulatory function as through such a rigorous check, OHSA may send a strong message across all duty holders engaged in the construction industry that infringements to OHS requirements will be comprehensively detected and met with enforcement action.*

Developments: *Partly Implemented*

2.4.7.1. The Authority asserts that exhaustive inspections are being carried out by its site inspectors. Particularly, OHSAs management emphasised that through years of experience in carrying out site visits, inspectors are in a position to easily identify OHS hazards and instances of breaches of regulations. Notwithstanding, OHSAs still disagrees with having an all-encompassing checklist to be used by officials when performing an inspection on a construction project. Specifically, during meetings with the audit team, OHSAs management explained that there are various types of construction sites and that, by implication, the level and type of risk may vary significantly. This, OHSAs asserted, renders the listing of all possible OHS infractions in one single checklist very difficult and would be too time consuming for site inspectors to fill-in such a list for every conducted inspection. The Authority further asserted that this increased paperwork could well lead to a reduction in the time available to its inspectors to carry out visits on other sites.

2.4.7.2. Despite disagreeing to an all-encompassing checklist, the Authority agrees to a reduced list to be used as a guide rather than a comprehensive document. In fact, the Authority has a three-page checklist that is to be used (in hard copy format) by its inspectors along with the latter's professional competence during an inspection. An indicative sample of 32 OHSAs files was reviewed (which in total featured 69 inspections) so that the audit team could determine whether this checklist is consistently used by OHSAs inspectorate staff or otherwise. From these, the audit team noted 22 instances in which the checklist was not deemed required as either works had not yet started at time of inspection or works were duly completed. From the remaining instances, the checklist was only found on 7 occasions. It is further important to highlight that, in these latter seven instances the reviewed checklists were not always found to be comprehensively filled in.

NAO Observation

2.4.7.3. NAO acknowledges the practical difficulties, highlighted by the Authority, that could emanate from the adaptation of an exhaustive checklist. Notwithstanding, this Office cannot accept that a reduced list is not always comprehensively filled in during a site visit. NAO strongly feels that every conducted inspection must be fully documented to serve both as comfort that as many OHS considerations have been reviewed and as documented evidence particularly in the event that Court proceedings would be required.

2.4.8. *This Office feels that OHSAs should more actively pursue to determine and verify the identification of all individuals operating on an inspected site, thereby mitigating any otherwise avoidable OHS related risks which may emanate from the illegal engagement of workers. NAO notes that the introduction of the skills card, together with the obligation of all workers to carry this upon their person while engaged in works, may be a significant asset in this regard, as this would serve as a certification of both identification and competence. To this end, this Office once again urges the Authority to cooperate*

and assist BICC so that this scheme is introduced and streamlined at the very earliest. Additionally, NAO recommends that the Authority extends its cooperation with other government entities, such as ETC, by sharing information gathered in site visits, thereby maximising mutual efficiency and reducing duplication of work.

Note: As the above recommendation attests, better identification of all individuals operating on an inspected site would be greatly enhanced through the widespread use of the skills card. As this area has already been discussed in point 2.2.5 of this report, this section will focus on the second part of this recommendation, that is, the suggested cooperation between OHSA and other entities for information sharing purposes and reduction in duplicate work.

Developments: Not Implemented

- 2.4.8.1. During meetings with OHSA management, the audit team explored options on how better information sharing between entities, as well as possible increase in efficiency through the removal of duplication of inspectorate work, could be achieved. Amongst others, the audit team enquired with OHSA if the possibility was ever considered of creating a joint inspectorate arm together with other public entities (such as Jobs Plus) which, albeit for other considerations, also need to inspect construction sites. This system would negate the need for two inspection teams from two different entities to carry out two different inspections on the same site.
- 2.4.8.2. OHSA management however disagreed with this concept, primarily as it believed that different areas (such as OHS and employment) would individually be too technical for any officer to be fluently conversant in both. This, OHSA asserted, could lead to a watering down in the approach of deployed officers towards OHS considerations, thereby increasing the risk of infringements going undetected.
- 2.4.8.3. Further discussion however brought agreement between OHSA and the audit team about a feasible way forward on this issue. Specifically, both parties agreed that systematic and properly documented communication between OHSA and other inspectorates would be beneficial to increase operational efficiency. This would mean that inspectors from different public entities would actively communicate with their counterparts if risks or evident infringements are observed which fall under the other entity's remit. In so doing, the entity receiving the information would then be in a position to dedicate inspectorate effort on a site which it would be reasonably certain that risks prevail, thus increasing efficiency.

NAO Observation

- 2.4.8.4. NAO is concerned with the fact that, up till writing of this report, no systematic communication approach had been adopted between OHSA and other inspectorate bodies who visit the same sites. Notwithstanding, this Office satisfactorily acknowledges

that the Authority agrees to the possible benefits which may be reaped by adopting better communication in this regard, and the importance that such communication is adequately documented.

2.4.9. In view of the disparity between OHSA's reduced operating hours and the spike in accidents during the summer period, **NAO recommends that the Authority explores its options to thoroughly cover this sensitive seasonal period. One possible solution may be that OHSA revisits its operational hours so that they better reflect the exigencies of the construction industry.** In so doing the Authority would be ascertaining a constant level of OHS monitoring during the year.

Developments: Fully implemented

2.4.9.1. During meetings with the audit team, OHSA highlighted that it has implemented a system whereby officers are assigned inspection visits to be conducted after the normal working hours. Specifically, the Authority stated that during the summer period (in which, similar to most public sector entities, OHSA staff work on half-day basis) additional inspections are carried out in the afternoons as well as on Saturdays, while in winter additional visits are assigned on Saturdays.

2.4.9.2. Seeing that NAO's original recommendation primarily targeted the summer period, the audit team requested information regarding after hours inspections for the summer periods of both 2018 and 2019. A review of forwarded information showed that for the period between July to mid-September 2018 a total of 203 inspections were carried out after hours, 40 of which were follow-ups to previous inspections. In the case of 2019, between July and September, 283 inspections were carried out, of which 30 were also follow-ups.

NAO Observation

2.4.9.3. NAO satisfactorily notes that OHSA has addressed the related concerns highlighted in the former's original report. In so doing, the Authority has increased its inspectorate presence during summer, which NAO considers as a sensitive seasonal period. Through the adoption of this practice the OHSA has lessened the risk of OHS infringements remaining undetected.

2.4.10. *Note: the following two recommendations, while separately listed in the original report, are both dependent on the same issue, that is, that administrative fines and, by extension, the minimum fine imposable by Court are considered as being too low by NAO. To this end, they have been addressed together for the purpose of this follow-up study.*

2.4.10.(i). *NAO suggests that the Authority exerts the necessary pressures, through the appropriate channels, so that relevant legislation is amended to minimise the disproportionality between the monetary value attached with Administrative Fines (AF) and the infringements they seek to deter.*

2.4.10.(ii). *In view of the fact that Court fines handed down to convicted infringers may not be acting as sufficient deterrent due to their low monetary value, NAO extends the recommendation highlighted above. This Office once again urges the Authority to exert the necessary pressure, through the appropriate channels, so that relevant legislation is amended in this regard to better reflect the severity of occurring/potential consequences emanating from identified offences. NAO opines that this measure will also have a deterring effect insofar as contestation to AFs is concerned due to raised minimum enforceable penalties at the Courts of Law.*

Developments: *Insignificant Progress*

2.4.10.1. During meetings with the audit team, OHSa highlighted that a process to revise the OHSa Act was initiated few years ago but this process is yet to be concluded. Specifically, the Authority asserted that a draft amended bill has been compiled but, due to the multiple changes in Minister, this is yet to be approved.

2.4.10.2. After being forwarded with a copy of the draft proposed changes to the OHSa Act, the audit team reviewed it accordingly to determine whether the corresponding recommendations made in the 2016 report were being addressed. This review satisfactorily concluded that this proposal allows for a higher maximum permissible amount that the Authority could impose as an administrative fine, as well as an increased minimum fine which can be handed out by the Court. Specifically, this proposal states that, in case whereby an incident is taken to Court, the minimum fine that could be imposed by the latter is that of €1,000 as opposed to €465.87 as cited by current legislation. This proposal goes on to state that the Authority can choose not to initiate criminal proceedings (only if the incident is not deemed of serious nature) and rather impose an administrative fine which does not exceed the above-mentioned minimum threshold. This Office therefore interprets this proposal as increasing the maximum permissible amount that could be imposed as an administrative fine from €465.87 (also as quoted in the current OHSa Act) to €1,000.

NAO Observation

2.4.10.3. NAO remains concerned that, as at time of writing of this report, fines permissible by law were still identical to those reported in 2016. This Office however positively notes that effort by the Authority has been made for this situation to change, and that the proposed changes to the OHSa Act would address both recommendations being followed up in this section. Should the proposed changes be incorporated into law, one would however still need to assess whether these increased figures are sufficient to adequately deter the occurrence of respective infringements.

2.4.11. *Given that AFs are sometimes issued years after an OHS infringement is identified, NAO urges the Authority to remedy this situation at the very earliest so that good practice is preserved and in order for infringers to regulate themselves in a timely manner.*

Developments: Significant Progress

2.4.11.1. During meetings with NAO, the Authority asserted that administrative fines are now being issued within a shorter period from when an infringement is originally detected. In order to verify this, NAO conducted a review on administrative fines which were issued during the year 2019. Information forwarded by OHSA showed that a total of 357 of these fines were issued, which number exceeds those individually issued during the 2016 report's scoped years (that is 2012, 2013, 2014 and 2015). NAO noted that of these, 12 were issued within 30 days from identification of infringement, 201 were issued between 31 and 100 days after the first identification, while 103 fines were issued between 101 and 200 days. The remaining 41 fines were issued more than 200 days after the OHS infringement was identified, eight of which elapsed a year. Two of these latter fines registered the longest time of 573 days each to be issued.

2.4.11.2. Further analysis by the audit team interestingly showed that 95% of fines issued within 100 days of an OHS infringement being detected, were settled within 100 days. On the other hand, 95% of those fines which were issued after 100 days of identification, remained pending as at time of writing of this report.

2.4.11.3. When presented with this consideration, OHSA asserted that the issuance of administrative fines is not always a simple process, particularly in cases in which individuals with no fixed residence are concerned. The Authority asserted that in such cases it may be a challenge to get hold of alleged infringers and consequently the issuance of these fines may take longer than strictly necessary. The Authority further explained that the issuance of AF's can also on occasions be stalled due to other related legal proceedings or considerations.

NAO Observation

2.4.11.4. This Office acknowledges that external challenges may present themselves when it comes to the Authority issuing AFs in a timely manner, particularly in cases in which infringers would not have a fixed residence or in instances in which other legal considerations would come into play. Nonetheless, while NAO notes that the bulk of fines were issued within a period of time which is less than that commented upon in the 2016 report, it still feels that there is room for improvement in the timeliness by which fines are issued in the more straightforward cases.

2.4.12. *The six-month period between the original inspection and a follow-up on site visit (especially in the case of small-scale construction projects), may prove to be too long. To this end, NAO recommends that OHSA revisits its current policy so that it takes into account factors such as project size as well as risk, and consequently schedule follow-up inspections accordingly. This measure could minimise the risk of OHSA's inspectorate staff going on site in vain as works would have already been completed.*

Developments: Partly Implemented

2.4.12.1. From the 32-file indicative sample reviewed by this Office (which spanned over the years 2017-2019), the audit team concluded that the period it takes for the Authority to carry out follow-up inspections remains largely similar to that observed in 2016. Specifically, this review showed that seven original inspections did not merit a follow-up as works were found to be very close to completion. Of the remaining cases, this review showed that only five follow-ups were carried out within six months of the original inspection, with an additional 10 being followed-up between six to 12 months from the first inspection date. NAO also observed that another seven follow-ups were carried out between a year and 24 months after the first visit. The remaining three reviewed cases did not feature a follow-up from the first inspection up to time of writing of this report. It is also important to highlight that, in this review, the audit team observed that an additional 15 inspections were carried out albeit as second or third follow-ups on the same projects.

2.4.12.2. Notwithstanding the above NAO was informed that the Authority's intention is to reduce the time it takes to conduct a follow-up inspection to a maximum of four months. Specifically, this Office is in receipt of a document (which the Authority identified as 'The system of bringing-up files') setting this timeframe. The audit team however observed that this document is dated 6th March 2020, which means that meaningful analysis on its adherence from the mentioned date till time of writing of this report, could not be carried out.

NAO Observation

2.4.12.3. This Office acknowledges OHSA's intent to reduce the follow-up timeframe to four months, and that a sensitive balance needs to be found in the allocation of the Authority's limited inspectorate effort between the amount of primary inspections and follow-ups. Nonetheless, NAO still perceives that the period it took for the reviewed follow-up inspections to be conducted, was still excessive particularly in view of the fact that a significant amount of construction projects may have a shorter lifespan than the registered periods.

2.5. Further Recommendations

OHSA's Operational Philosophy

2.5.1. While recognising that OHSA has other roles and responsibilities to attend to, NAO once again strongly urges the Authority to give its regulatory and enforcement functions its highest priority as evidently this is what is mostly required in the local construction scenario at present.

OHSA's Operational Environment

2.5.2. Given that the legal responsibility to appoint a PS, where applicable, remains assigned to the client, NAO once again urges the Authority to revisit its position in this regard. If the Authority recognises the merit in NAO's position, it is encouraged to solicit, through the appropriate channels, for a shift in the legal responsibility of appointing PSs from the client to other, more technically and legally conversant stakeholders.

2.5.3. This Office still recommends that OHSA drafts a contractual template which could be used as reference for good practice in the drafting of an agreement between a client and a PS. This would mitigate the risk of PSs with ill-intent wanting to take advantage of less technically conversant clients.

2.5.4. Given that NAO could not conclude whether OHSA is adequately collaborating with BICC or otherwise to comprehensively include OHS related material in the skills card scheme, it urges the Authority to ascertain that such cooperation is indeed secured.

2.5.5. Given that the audit team is not in receipt of any supporting documentation to substantiate OHSA's claim that it cooperates with MCAST in designing OHS related educational material, NAO once urges the Authority to ensure that such cooperation is indeed offered and, where possible, documented accordingly.

OHSA's Resources

2.5.6. While NAO acknowledges that the Authority may lack the required resources to adequately shoulder its responsibilities, it still urges the latter to expedite the completion of the outsourced business plan which, amongst other matters, is intended to identify ways by which the OHSA can maximise its current resources. Specifically, this Office draws OHSA's attention to the lack of digitised processes (discussed in detail in other parts of this report), which are undoubtedly resulting in more man-hours being unnecessarily absorbed in certain processes. In so doing, any request for further resources would be based on the requirements of a leaner operation.

OHSA's Operations

2.5.7. NAO cannot emphasise strongly enough the need for OHSA to have an all-encompassing MIS up and running at the very earliest. To this end, this Office encourages the Authority

to ascertain that all aspects that need to be incorporated in this system (including those identified throughout this report) are duly provided for in any new adopted system in order for OHSA's internal processes to be streamlined as much as possible. Once this exercise is carried out, this Office urges the Authority to renew its efforts in securing funds for the procurement and implementation of this system.

- 2.5.8. The importance of an adequate MIS is once again highlighted, specifically for near misses to be efficiently received and processed by the Authority. This Office understands that with the technical setup as at time of writing, such a process could prove to be very laborious to the extent that it would not be worth undertaking. An effective MIS could however dilute this challenge almost completely, especially if automated processes are integrated within. Specifically, this Office perceives the possibility of such reports being automatically inputted, sorted and processed in this system upon receipt. The Authority would then have at its instant disposal invaluable information which could be utilised strategically to better direct its inspectorate effort.
- 2.5.9. NAO strongly urges the Authority to reconsider its position on revising the set threshold for the obligation of completion of a construction notification form. While this Office understands that being notified of all undertaken construction projects may be bureaucratic, it still maintains that the set threshold may simply be too high when considering the local scenario, thereby greatly diminishing OHSA's visibility within the construction sector. NAO also acknowledges that the larger the number of notifications being received by the Authority the bigger the workload for these to be processed accordingly. However, this Office asserts that this increased workload could very well be mitigated by the effective implementation of the MIS, particularly through process automation.
- 2.5.10. NAO considers the fulfilment of the PR plan as of high importance. To this end it strongly urges the Authority to expedite the required internal processes so that the proposed improvements could be implemented at the earliest. This Office augurs that, in so doing, the relatively limited success registered from PR initiatives undertaken so far is enhanced.
- 2.5.11. This Office urges OHSA to exert pressure, through appropriate channels, so that the necessary funding is obtained to set up a robust accreditation system for competent persons. Such a measure will greatly mitigate the occurrence of incompetent individuals presenting themselves as potential PSs, to the obvious detriment to their prospective clients. Once this is achieved, NAO once again recommends that accredited individuals should be the only ones who can be listed in OHSA competent persons register and that these should be the only legally allowable option to be appointed as PSs.
- 2.5.12. As already suggested in point 2.5.8, this Office once again urges the Authority to renew its efforts with respect to the acquisition and implementation of the MIS so that an inspection prioritisation system as well as a profiling mechanism could be constructed.

Here NAO also suggests that care should be taken that the MIS would include all necessary information parameters that would enable OHSA to adequately construct such systems. NAO additionally recommends that, till this is secured, OHSA still endeavours to create basic electronically based systems which would assist it in the selection of sites for inspection and to identify high-risk individuals for more targeted attention.

- 2.5.13. NAO urges the Authority to ensure that its checklist is always being duly filled-in and properly filed. In addition, it is also highly recommended that, in cases that identified infringements are not pre-listed in OHSA's checklist, the site officer still comprehensively documents such a shortcoming in the 'Other Remarks' section. This Office also perceives that the digitisation of this checklist would be greatly beneficial to the efficiency by which OHSA inspectors conduct their work. Specifically, electronic portable devices could be used during inspections unto which inspection findings could be recorded. These devices could also be directly connected to the aforementioned MIS system, with data inputted on-site being automatically sent and recorded centrally at OHSA.
- 2.5.14. NAO encourages OHSA to spearhead an initiative in which inspectorate entities which need to visit construction sites, come together and draft a memorandum of understanding on a systematic approach towards inter-entity communication. Such an understanding should clearly lay out a systematic communication strategy targeted at collectively increasing the visibility on the sector and, as a consequence, increase the potential efficiency by which the respective inspectorate efforts can be allocated.
- 2.5.15. This Office urges OHSA to renew its efforts so that the proposed increased permissible fines which could be imposed both by itself as well as by the Court, are incorporated into law at the very earliest. NAO is of the opinion that such increased penalties could be instrumental in setting a stronger deterrent against the occurrence OHS infringements.
- 2.5.16. The Authority is once again encouraged to continue to improve, as much as possible, the timeliness by which it issues AFs following the identification of an OHS infringement. This is pivotal so that the effectiveness of this enforcement tool is continuously enhanced.
- 2.5.17. This Office once again acknowledges the Authority's intent to reduce the timeframe for a follow-up inspection to be carried out to four months and urges the latter to implement this standard at the very earliest. NAO also perceives the possibility of this process being facilitated through the aforementioned MIS, particularly through a system of automated internal notifications of when a site is due for a follow-up.

Chapter 3

Management Comments

As outlined in Chapter 1, the completed report was forwarded to the audited entity for feedback prior to publication. While certain points raised by the Authority were agreed upon and integrated in the report proper, other views remained in contrast to NAO's opinion. This chapter presents the more salient of these views, as forwarded by OHSA, which were not included in the report proper.

3.1. Re: NAO's recommendation to shift the legal responsibility of appointing Project Supervisors from the client to more technically and legally conversant stakeholders.

"OHSA considers the client to be in a pivotal place in the chain of responsibilities through which ohs can be safeguarded.

It needs to be stressed that the roles and functions pertaining to project supervision and coordination, established by the relevant Directive have been condensed into one, namely that of the Project Supervisor. This means that in simplifying the requirements of the Directive, a number of obligations had to be assigned to one person, the Project Supervisor, whilst ensuring the concept of client responsibility.

Thus the responsibility of appointing a project supervisor cannot be transferred to another dutyholder, let alone a contractor as suggested by NAO, in view of the ensuing conflict of interest that will arise.

...

The reference by NAO to the 2018 amendments whereby domestic clients were exonerated from the responsibility of appointing a project supervisor is contextually wrong – the 2018 amendments refer to those situations whereby there is only one contractor on site (and therefore the need to coordinate different contractors does not arise).

NAO's statement that the 2018 amendments give rise to the possibility of OHS considerations not being fully adopted is similarly erroneous, since contractors have not been exonerated of any of their responsibilities at law, namely to carry out risk assessments (which should suffice in the absence of a health and safety plan) and to take the necessary remedial measures."

3.2. Re: OHSA – BICC and OHSA – MCAST collaboration

"The NAO also refers to the ongoing collaboration between it and BICC, especially with regards to the development of Skills Card. Whereas OHSA has provided NAO with several examples of communications with BICC on the subject which go back several years, it is felt that since this is essentially a Building Industry Consultative Council initiative that will be implemented by the Building and Construction Agency, NAO seeks to obtain information directly from BICC and BCA.

OHSA reiterates its previous statements that it has been very proactive in this regard and has collaborated with BICC extensively – this can also be verified directly with BICC.

Regarding the reference to collaboration with MCAST – OHSA again reiterates its ongoing collaboration with MCAST, including the organisation of seminars. Furthermore, all MCAST OHS trainers are either ex-OHS Officers, employed with OHSA or have obtained a basic qualification in ohs; they are invited and in fact several attend, seminars organised by OHSA (apart from the open personal contact which they maintain with OHSA) and are therefore fully informed of all developments in the field. OHSA also highlights the fact that the accreditation of training courses should not be OHSA's responsibility."

3.3. Re: Near misses.

"NAO repeats its recommendation that near misses in the construction industry should become notifiable to OHSA and linked this to the need to increase OHSA's visibility. OHSA reiterates its position that it does not agree with the notion that it should consider increasing its visibility by introducing bureaucratic burdens which do not add value to the system (namely that of decreasing accidents). According to the model presented by OHSA (based on a number of theoretical studies), one would expect around 60,000 near misses annually.

OHSA repeats the widely accepted view that near misses should be investigated by the duty holder (usually the employer), with no obligation to notify OHSA. This notwithstanding, OHSA does investigate near misses which come to its attention, especially where the outcome might have been serious.

The reference to the requirement under SEVESO is considered out-of-place since near misses in SEVESO sites, apart from being very rare, have the potential to affect thousands of people across the Member States. A similar obligation also exists with regards to nuclear accidents – an accident in a nuclear power station or in a SEVESO site can never be equated with a near miss at a construction site, for obvious reasons.

NAO also included an excerpt from the European Process Safety Centre's (EPSC) document entitled 'Benchmarking on EPSC Member Company – Incident Reporting System', which states that 'near-miss reporting was key to improving safety performance.' OHSA agrees with this statement and has informed NAO that in the interests of health and safety, every company should be informed by the workers of near misses experienced by its workers. NAO further quotes from the document 'companies can learn from their near misses without having to suffer the consequences of a full accident.' The document quoted in fact states that the reporting of near misses, and the investigation thereof should be by the workers to the company and by the company itself. Nowhere is the document recommending that the reporting of near misses to the Labour Inspectorate becomes a mandatory requirement."

3.4. Re: Lowering the threshold for the requirement of a Construction Notification Form to be sent to OHSA

"NAO repeats its recommendation that the CNF should be required to be sent for a larger number of projects. Apart from linking this to 'OHSA's visibility', NAO affirms that the situation as is compounds the risk of OHS infringements remaining firmly outside OHSA's inspectorate reach.

OHSA strongly disagrees with such a statement. In the first instance the simple act of sending a CNF does not, on its own, reduce infringements or accidents – OHSA provided evidence that the majority of fatal accidents in the construction industry occurred in ‘notified sites’. OHSA gives a lot of attention in identifying the root causes of accidents, and it never transpired that an accident was caused because of a lack of a CNF.

On the other hand, the fact that no CNF is required to be sent, does not exonerate any duty holder from the obligations to have systems in place to safeguard ohs.”

3.5. Re: Limiting project supervision to registered competent persons

“Whereas there may be some value in this recommendation, OHSA is highly aware that the number of persons who are registered with OHSA remains low, and introducing such a requirement would stall the industry. OHSA has highlighted the fact that the key word that needs to be considered is ‘competence’, which after all, is already a legal requirement. Apart from this, OHSA has also pointed out that being registered as ‘competent’ is no guarantee that ohs will be safeguarded, so much so that OHSA has taken enforcement action against competent project supervisors who did not perform their duties. Similarly, OHSA emphasizes the need to have adequate safeguards in place irrespective of whether a competent person has been appointed – interventions by OHS Officers are directed towards risk reduction and control and action is always taken whenever uncontrolled risks come to light, irrespective of whether a competent person has been appointed or not. This is considered to be much more effective than simply attesting competence.”

3.6. Re: The introduction of profiling systems and track records

“The introduction of profiling systems is considered illegal under GDPR. This notwithstanding, OHSA does operate a system, which is limited in scope, whereby repeat offenders are treated more incisively.

On the other hand, OHSA accepts the statement that a fully automated electronic Management Information System would assist OHSA in many ways – this is something on which OHSA has been working, and for which funds have been requested for several years.”

3.7. Re: The need for OHS Officers to carry out exhaustive inspections during on-site visits.

“OHSA has already informed NAO that it disagrees with this recommendation, as what NAO is suggesting is for OHS Officers to carry out risk assessments, something which by law has been assigned to other duty holders. What OHS Officers do, not only in Malta but across all of the European Union, is for Officers to check whether management systems are in place and to carry out walk-through surveys.

Regarding checklists – OHSA reaffirms that an exhaustive check list would be unwieldy and impractical, unlike the current checklists already in use by OHSA. However OHSA agrees with NAO that for audit purposes, checklists should be filled in by Officers even in the absence of breaches of the legislation (currently, OHS Officers do not always fill in the checklist when everything is found to be in order) – as a matter of fact, verbal instructions have already been issued to the Technical section to comply, and this will be followed by amendments to the Operations Manual.”

3.8. Re: Accident Rates in Malta

“OHSa contends that whereas every accident is one too many, the progress registered in Malta in the overall levels of occupational health and safety need to be highlighted. This also holds true for the construction industry. NSO provides statistics on a yearly basis, and does so for five consecutive years, rather than collating them over a 5-year period, when an obvious downward trend would have become noticeable. The report similarly does not mention the greatest limitation in the collation of data as presented – namely that the number of workers, registered with JobsPlus as working in the construction sector is markedly lower than the real number of workers involved. If it was possible to quantify the number of workers who are not registered as performing construction activities, but who actually do carry out such work (part-timers, foreign workers etc), the rate of accidents would have been markedly lower. This is why it is important to look at trends over time, as the number of such workers is considered more or less stable over time and should therefore be considered as a constant which persists over time (thus whereas the rates may differ, the trends would not be affected).”

Concluding Remark

This follow-up review positively noted that a number of the recommendations put forward by this Office in 2016 have been accepted by the OHSA, even if the level of their implementation varies significantly from one to another. It is however manifestly clear that at the very centre of OHSA's potential for improved operations is the expedited introduction of the MIS. As can be seen in this review, there are multiple pivotal regulatory and inspectorate functions which can be made significantly more efficient through a comprehensive electronic system. Amongst others, such a system would be instrumental to facilitate receipt of information, data processing, sampling and profiling through automation. While NAO acknowledges that the acquisition of an MIS would carry with it a substantial price tag, it however strongly believes that an entity with an inspectorate remit as wide and varied as that of the OHSA, simply cannot do away without such a tool. This Office however strongly urges the Authority to ascertain that all necessary components, including those highlighted in this report, are adequately provided for in the technical specifications of such a system. NAO once again highlights that the introduction of such a system will also inevitably have an effect on the perceived need for additional human resources, with this being expected to reduce due to process automation.

NAO concludes this follow-up review by urging OHSA to revisit its position in instances in which it did not accept recommendations put forward by this Office in 2016. In such instances, further recommendations have been put forward and NAO augurs that the Authority gives them due consideration.

2019-2020 (to date) Reports issued by NAO

NAO Work and Activities Report

April 2019 Annual Report and Financial Statements 2018 - Works and Activities

NAO Audit Reports

October 2019 Information Technology Audit: The Effective use of Tablets in State, Church and Independent Primary Schools

October 2019 Follow-up Reports by the National Audit Office 2019

November 2019 Report by the Auditor General on the Workings of Local Government 2018

November 2019 Performance Audit: An analysis of issues concerning the Cooperative Movement in Malta

December 2019 Report by the Auditor General on the Public Accounts 2018

December 2019 An investigation of contracts awarded by the Ministry for Home Affairs and National Security to Infinite Fusion Technologies Ltd

January 2020 Performance Audit: Community Care for Older Persons

February 2020 Performance Audit: Assessing the Public Transport Contract and Transport Malta's visibility on the service

March 2020 Information Technology Audit: ICT across Local Councils

March 2020 The disposal of the site formerly occupied by the Institute of Tourism Studies

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