

The Legal Foundation for OHS Law in Malta



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Lecture Summary

Topics to be covered during this session:

- A good understanding of Cap 646 of the laws of Malta
- The stakeholders regulated by the Act
- The main duties and obligations of all stakeholders emanating from the Act
- How the Occupational Health and Safety Authority is Set up
- The Health and Safety Tribunal
- Difference between Administrative Instrument, Special Compromise procedure and court proceedings

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Occupational Health and Safety at Work Act

Chapter 646 of the Laws of Malta

- This Act replaces the previous Occupational Health and Safety At Work Act that was enacted in 2000
- The scope of the Act is the promotion and safeguard of the health and safety of workers at work

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Interpretation of the main terms

- "Authority" means the Occupational Health and Safety Authority
- "administrative instrument" means such instruments in accordance with article 17 which are required to discharge the Authority's functions and shall include any order, directive, protocol, guideline, explanatory memorandum, information circular, including notices, or other publication issued by the Authority (one administrative instrument has already been established. The Administrative instrument published on the aims to establish and regulate OHS Practitioners through a Competent Person Register)

Interpretation of main terms... cont..

- "client" means any natural or legal person for whom a project is carried out
– Mainly found in the construction Legislation
- "Code of Practice" means a standard, specification or any other written or illustrated form of practical guidance, instruction or control
- "competent person" means a person possessing adequate qualifications and minimum accreditations in terms of law or where required, as established by the Authority through administrative instruments, suitable training and sufficient knowledge, experience and skill for the safe performance of the specific task or work required, and who provides advice with regard to the health and safety at work preventive and protective measures required to be taken, and whose name appears in the competent person register administered or otherwise delegated by the Authority in relation to such matters which are regulated by the Authority;

Eligibility to be included in the Competent Person Register

- a. They must be citizens of Malta or of a country within the European Union, or residents of Malta who have obtained the necessary permits for this purpose from the relevant Authorities, as well as written confirmation that they are registered with Jobsplus from the same Agency.
- b. Academic Qualification: A qualification certified by the Malta Qualifications Recognition Information Centre (MQRIC) at a Level five (5) minimum, (60 ECTS) or higher in occupational health and safety.
- c. Proven Experience and Competence: A minimum of two years of verifiable practical experience and competence in occupational health and safety.
- d. Proficiency in English or Maltese.

- e. Police Conduct Certificate: In the case of a Maltese certificate, issued within the last six (6) months from the application date, and clean from any breaches, related to the profession and Occupational Health and Safety (OHS) legislation.

Where the applicant is a foreigner, in addition to the above requirements regarding the Maltese certificate, they must also provide an authentic Police Conduct Certificate from their country of origin

- f. Whose name does not appear in the Administrative and Compromise Fines Register on the OHSA webpage.
- g. Applicants holding a foreign qualification shall be required to successfully complete a training module on Maltese Occupational Health and Safety Law and the local Occupational Health and Safety context, as recognised by the Authority.
- h. Supporting Documentation:
 - i. A certified copy of the qualification.
 - ii. An equivalence certificate (if applicable), attesting to the number of ECTS.
 - iii. An updated Curriculum Vitae (CV).
 - iv. Documents attesting to the 2 years' experience.

Interpretation of Main Terms..... Cont.....

"duty holder" means any person who has a duty or obligation to fulfill and, or the responsibility to ensure that a duty or an obligation is fulfilled by virtue of any requirement of this Act or of subsidiary legislation, and shall include as the case may be, an employer, a self-employed person, a worker, a client, a project supervisor for health and safety matters, a manager who is responsible for workers, a supervisor who is responsible for workers, an HSRO and any other person to whom this Act or any subsidiary legislation made thereunder assigns a duty or responsibility;

“employer” means any person for whom work or a service is performed by a worker or other person who has an employment relationship with a worker, and includes a contractor or subcontractor who performs work or provides a service or undertakes to perform any work or to supply services,

"HSRO" means the Health and Safety Reporting Officer appointed in accordance with article 12(8) and who is a high-ranking employee at management level, or such other person which an employer may appoint, as may be established by regulations issued in terms of this Act

"officer" means a health and safety at work officer appointed in accordance with article 18 and who is in possession of a certificate of appointment issued according to the provisions of the said article

- "self-employed person" means a person who works for profit or gain other than under a contract of employment
- "work" means any duty, activity, task or service producing a product or result, carried out by a worker or self-employed person and being performed for payment or for free or in exchange for goods, for services, for profit or for benefit
- "worker" means any person employed by an employer to perform work, or who provides a service to another person under a contract of service or for service, whether such contract is in writing or otherwise, and includes a trainee, an apprentice, a volunteer, who were it not for the lack of remuneration, would essentially be undertaking responsibilities akin to those of a paid employee and a self-employed person, but shall not include the crew of a ship or an aircraft registered in Malta or any other person employed thereon as part of the ship or aircraft's complement;
- "workers' health and safety representative" means a person elected, chosen or designated, as prescribed in regulations, to represent workers on all matters relating to the promotion and protection of their health or safety at work;
- "workplace" means any premises, place, facility, vehicle, vessel or seacraft or any other movable or immovable or location, whether public or private, where work is carried out or to which the worker has access in the course of his employment, and without prejudice to the generality of the foregoing, shall include a vehicle or vessel or any other seacraft where such vessel or seacraft is within a port in Malta or the internal or territorial waters thereof, or at any dockyard, harbour or other similar installation in Malta, other than a warship belonging to a foreign state.

Applicability

This Act shall apply to all workplaces and to all sectors of work activity, both public and private, and to all work activities, including those carried out by self-employed persons but shall not apply to those specific activities carried out by members of a disciplined force or a civil protection service, having characteristics particular to an activity by the disciplined force inevitably conflicting with this Act, including activities relating to civil emergencies, public order, national security or operations by the military

Establishment of the Authority

- The Authority is composed of a Board;
 - Chairperson
 - 8 members
 - Appointed by the Minister responsible for OHS (except for the Director for Industrial and Employment Relations)
 - Hold office for 2 years
- The Executive

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Functions of the Board

- Ensuring that the Executive carries out its duties to a high level and oversees that the Executive implements health and safety at work initiatives as prescribed in the Act
- Review and oversee that the Executive reaches the targets set out for the Authority by the Minister
- Reviews the Authority's budgets, management accounts, internal procedures, human resource plans and the financial audits.
- Approve and adopt the Authority's estimates of its income and expenditure for the subsequent year.
- Recommend strategies by which the general national policy relating to health and safety at work, indicated to the Authority by the Minister, may be implemented;
- Advise the Minister regarding the drafting of policies and regulations to promote, maintain and protect a high level of health and safety at work, and on any matter concerning the Authority;
- Recommend and if required prepare draft regulations for the Minister's consideration, guidance documents, and Codes of Practice
- Solicit participation by the social partners and promote initiatives in favour of high levels of health and safety at work;
- Foster harmonious relations on matters of health and safety at work between the various stakeholders and duty holders;
- Encourage and support a constructive dialogue between constituted bodies or organisations of whatever nature about the benefits of ensuring health and safety at work;
- Engage in regular consultations with constituted bodies
- Prior to the implementation of any policy relating to health and safety at work, the Minister shall request the Board to provide any recommendations or opinions it may have in relation to any policy.
- The Board shall refrain from being involved in executive decisions or actions taken by the Executive in fulfilment of the scope and objectives of the Act.

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The Executive

- Headed by the Chief Executive appointed by the Minister and shall have the below functions:
- Apply the provisions of the Act and of any regulations made thereunder;
- Establish implementation strategies and policies related to health and safety at work;
- Monitor compliance with relevant laws relating to health and safety at work and to take enforcement action where necessary;
- Promote and disseminate information regarding health and safety at work, and the methods required to prevent injury, ill health or death at work;(e) collate and analyse data and statistics on injuries at work, ill health and deaths and on matters ancillary to health and safety at work
 - **Provided that the Executive may request any data or information from any person including any Government department, agency, entity or corporation on any matter, directly or indirectly related to health and safety at work, and such data or information shall be provided without delay**
- Keep registers of such plant, installations, equipment, machinery, articles, substances, or chemicals intended for use at the workplace, as it may deem appropriate, which provide a serious risk to health and safety at work;
- Carry out any investigation on any matter concerning health and safety at work, including but not limited to the investigation of any accident, incident, 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 health and safety provided at any workplace, and the duty of the Authority to ensure the enforcement of any provision of this Act shall not be reason to debar the carrying out of such investigations: **Provided that when carrying out the said investigation, the Executive may request any information, documentation or any item or thing deemed necessary by the Executive for the conclusion of the investigation**

The Executive

- Promote and carry out, coordinate or commission, and where the Authority deems necessary publish, scientific research, surveys or other professional studies aimed at better methods of preventing illness, injury, or death at work;
- keep registers, if applicable in accordance with this Act, of competent persons in matters related to health and safety at work, and to develop schemes as are necessary for the accreditation of competence and, or certification in the field of health and safety at work: Provided that the Executive may determine the minimum qualifications required before the name of a person may be entered into the register (Refer to the administrative instrument);
- Receive and review reports submitted by the HSRO and take the appropriate action to address the identified concerns;
- Issue administrative instruments; and, or
- Impose administrative penalties and fines (multi)

Duties of Employers

- Ensure the physical and **psychological** wellbeing of his workers at all times and of all persons who may be affected by the work being carried out for such employer at their workplace.
- Measures shall follow:
 - (a) by the avoidance of risk;
 - (b) by the identification of hazards associated with work;
 - (c) by the evaluation of those risks which cannot be avoided;
 - (d) by the control at source of those risks which cannot be avoided;
 - (e) by taking all the necessary measures to reduce risk and danger as much as reasonably practicable, according to the particular case;
 - (f) by giving collective protective measures priority over individual protective measures;
 - (g) by adapting the work to the worker,
 - (h) by adapting to technical progress in the interest of health and safety at work;
 - (i) by the development of a coherent overall prevention policy which covers technology, the organisation of work, working conditions, social relationships and the influence of factors related to the working environment;
 - (j) by replacing the dangerous by the non-dangerous or the less dangerous; and
 - (k) by giving appropriate instructions to workers

Duties of Employers

- To provide such information, instruction, training and supervision as is required to ensure health and safety at work.
- Ensure that there shall be elected, chosen or otherwise designated a person or persons to act as the workers' health and safety representative representatives shall be given access to documents, be allocated necessary time to carry out their role
- An employer shall prepare and review as and when appropriate, a statement of the general policy with respect to health and safety at work
- Inform any contractor, self-employed person and workers from outside the organization of the contents of the health and safety at work policy, the presence of specific hazards at work, the resultant risks, and the preventive and protective measures required to be taken, and shall ensure that the provisions of the policy are abided by at all times.
- Ensure that any measure required to be taken does not involve financial cost to the workers.
- **The Minister may by regulations issued in accordance with this Act, in order to address proper compliance with the terms of this Act and the regulations made thereunder or otherwise in view of the nature of work conducted by an employer, require an employer to appoint an HSRO who shall be tasked with the supervision and monitoring of the day-to-day implementation of the health and safety at work measures, policies and procedures of this Act and any regulations made thereunder**
- **Provided that, without prejudice to the rights of the Authority under this Act and the regulations made thereunder, the Authority may, in such cases where serious and consistent breaches of this Act and the regulations made thereunder become apparent, order that an HSRO is appointed by an employer for such time as the Authority may deem necessary. In such cases, the terms of the Act relating to the HSRO shall apply to such employer irrespective of whether regulations in terms of this sub-article have been published**

Duties:

- Receive a report made by other officials, workers or any person of any information or other matter which may give rise to information or suspicion of a breach of this Act or any regulations made thereunder;
- Conduct investigations necessary to determine whether the information or matter warrants a report to be made to the employer;
- Provide a report in writing to the employer when the HSRO considers there to be a breach of this Act or any regulations made thereunder, which shall also include recommendations for the rectification thereof; and
- Provide a report in writing to the Authority where the HSRO determines that following a report made by him to the employer in accordance with the previous paragraph, the employer did not reasonably implement the recommendations made therein or did not seek to comply with the provisions of this Act or its subsidiary legislation, within a reasonable time.
- Where following the consideration of a report, the HSRO determines that no reporting to the Authority is necessary, the HSRO shall record the reasons for such determination in writing and, upon request, shall make it available to the Authority.
- A register to this effect shall be kept by the HSRO.
- The employer shall at all times be kept fully informed of any communication, exchanges or discussions between the HSRO and the Authority and shall be entitled to participate at any stage there

Legal responsibilities of the Employer & HSRO

- By appointing an HSRP, the Employer is not relieved from its duties under the act and that emanating from its position of an employer
- Employer shall give access to information & Resources to the HSRO
- When HSRO is needed, the employer shall inform OHSA with the details of the appointed HSRO
- HSRO to remain responsible until OHSA received information about any changes
- HSRO shall consult the OHS Rep to compile the report
- Employer shall take into account the report by the HSRO

HSRO Non Liability

- No action, or other proceeding for damages shall lie or be instituted against the HSRO for:
- (a) any act done in pursuance of this Act and any regulations made thereunder, unless the HSRO has acted in a negligent manner which shall include inter alia the non-observance of his duties as provided in accordance with this Act and any regulations made thereunder; or
- (b) any act done or omitted to be done in the performance of his functions where it is sufficiently proven that the employer failed to provide the HSRO with the necessary information in accordance with sub-article (3) and the HSRO would have reported such lack of information to the Authority.
- It shall be considered an offence under this Act for the HSRO to fail to submit a report to the Authority
- In cases where the recommendations made by the HSRO are not implemented, the HSRO shall report such lack of implementation to the Authority and the employer shall be guilty of an offence under this Act

Non agreement to the Report by the HSRO

- In cases where a worker or any person presenting a report in writing to the HSRO is not satisfied with the report or recommendations prepared by the HSRO in relation to any matter raised by such worker or person, such worker or person shall be entitled to report the matter to the Authority.
- The Authority shall investigate such a matter accordingly and shall communicate its findings to such worker or person, the employer and the HSRO in writing.
- Should it be determined that the HSRO has failed to make the correct recommendations to the employer in terms of this Act, in that case the HSRO shall be guilty of an offence under this Act.

Employer not appointing an HSRO Liability

- Failure to appoint an HSRO in accordance with the provisions of this Act shall constitute an offence against this Act. Any employer found guilty of this offence shall be subject to a fine (multa) of not more than fifty thousand euro (€50,000), as determined by the Authority

Duties of Workers

- It shall be the responsibility of each worker to take care as far as possible of his own health and safety and that of other persons affected by his acts or omissions at work **in accordance with his training and the instructions given by his employer.**
- Workers shall in accordance with their training and the instructions given by their employer:
 - (a) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production;
 - (b) make correct use of the personal protective equipment provided to them and, after use, return it to its proper place;
 - (c) refrain from disconnecting, changing or removing arbitrarily fitted safety devices, including those fitted to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly; and
 - (d) **immediately inform the employer** and, or the workers with specific responsibility for the health and safety of workers of any work situation they have **reasonable grounds** for considering represents **a serious and immediate danger** to health and safety and of any shortcomings in the protection arrangements.
- It shall be the duty for every worker to **cooperate with the employer** and with the workers' health and safety representative or representatives at work, on all matters relating to health and safety.
- A worker shall not engage in any improper conduct or behaviour that is likely to endanger his own health and safety at work or that of any other person

Duties of Self Employed Persons

- The statutory provisions applicable to employers shall also apply to a self-employed person. Particularly a self-employed person shall assess all risks to the health and safety of all persons, including his own, arising out of the work to be carried out by the self-employed person and shall take all appropriate measures according to the general principles of prevention as established in this Act.

Administrative Instruments

- Issued by the Authority
- Have the force of Law
- No need to go through parliament
- Limited to the below topics:
 - Qualifications and standards to perform OHS work
 - Prohibit work activities/equipment that may endanger workers' health & Safety
 - Regulate mandatory insurance covers by employers in favor of their employees
 - Specify minimum accreditations to become competent persons

The Officers

- Powers and Duties:

- to enter freely and without previous notice in any workplace, at any time of day or night;
- to request the assistance of a member of the Police Force in the execution of his duties;
- to question, alone or in the presence of witnesses, any employer or worker, including any person acting on behalf of any employer or carrying out work for such employer, if such is the case, on any of the matters falling under this Act/regulations under this Act
- Inspect any book, document, design, plan or list of technical specifications which may provide information or clarification with regard to health and safety at work at any particular workplace
- Take possession, upon giving receipt therefor, of any object required for tests or as evidence of any accident, injury or disease at work, or of any alleged breach of this Act or of any regulations made thereunder;
- To examine or see to the examination of workplaces and of any object therein, and to take samples for examination of any article, substance or material found in any workplace or within its curtilage for the purpose of protecting health and safety at work, and to ensure that such samples are preserved for use as evidence in any proceedings in accordance with this Act or of any regulations made thereunder
- Order that nothing is disturbed during an investigation
- Require the operation or setting up in motion any equipment that may be relevant to an examination during investigation or an inspection

Powers and Duties of Officers Cont..

- Requires employers to provide at own expense:
 - a certificate signed by a Perit relating to the safety of any building or structure, including any temporary structures;
 - a certificate signed by a mechanical or electrical engineer regarding the safety of any mechanical or electrical installation, as the case may be, including any temporary installation;
 - a certificate signed by a medical practitioner relating to the health at work of any worker or any class of workers, which shall be presented to a medical officer of the Authority;
 - any information relative to health and safety at work, including information which refers to protective measures and any certificates duly signed by other persons competent in other areas ancillary to health and safety at work;
- to require any duty holder and, or employer, agent, manufacturer, importer, supplier, user or other person to provide at their expense any document, certificate or list of technical specifications in relation to any matter concerning health and safety at work, the method of handling or use of any plant, installation, equipment, machinery, article, substance or chemical which is used or intended to be used at work
- Divulge information before a Tribunal and/or court
- Any other power as is reasonably necessary for the purpose of safeguarding health and safety at work

Orders by an Officer

An officer may give an order, verbally or in writing, to safeguard health or safety at work, and every person shall observe such order forthwith until such time as it is revoked by an officer or until it has been revoked by a competent Court or Tribunal:

Provided that the person who receives the order, whether such person is a worker or an employer, may defend oneself from the charge of not having observed the order if he proves that compliance with the order would have been of immediate detriment to health and safety at work

Any order given verbally shall be confirmed and notified in writing, including by electronic mail upon the person to whom it was given within three (3) working days.

An officer may order that a workplace or part of a workplace be sealed, and such officer may revoke any such order. When workplace is sealed, nobody shall enter.

An officer shall not be required to afford to an employer, worker or other person an opportunity for a hearing before giving an order

Health and Safety Tribunal

- There shall be an independent and impartial Tribunal which shall be competent to:
- (a) hear appeals brought by any person following decisions, orders, or administrative instruments issued by the Authority; and
- (b) hear claims in connection with breaches of an administrative nature and as a result of which an administrative penalty can be imposed
- The Tribunal shall be composed of a Chairperson who has at least five (5) years of experience as a warranted legal professional and two (2) other members who are warranted professionals in fields related to health and safety at work with at least five (5) years of experience
- Appointed by the Minister for a term of 3 years
- Any party to a decision delivered by the Tribunal who feels aggrieved by a decision of the said Tribunal, may appeal on points of law to the Court of Appeal by means of an application filed in the registry of that court within twenty (20) days from the date on which the decision of the Tribunal was served

Offences and Administrative Penalties

- Every act or omission against this Act, and which does not constitute a criminal offence, shall be subject to an administrative penalty.
- Administrative penalties are at the discretion of the Authority and shall not exceed twenty thousand euro (€20,000) for each breach of an administrative nature.
- Breaches to be notified by means of a written notice
- Person receiving the breach has a period of twenty (20) working days within which to admit the administrative penalty, including the payment of any administrative penalty levied, or otherwise appeal such sanction before the Tribunal. If an appeal is not filed within this time, the penalty shall become an executive title

Offences

- Any person who, in relation to any matter under this Act or any regulations made thereunder:
- (a) furnishes any information which that person knows to be false, or recklessly furnishes any information which is false;
- (b) with intent to deceive produces, furnishes, sends or otherwise makes use of any document which is false;
- (c) wilfully refuses or without lawful reason withholds any material information, proof of which shall be brought by such person;
- (d) knowingly or recklessly makes any incorrect statement or entry in any record or return or on any document kept or furnished under this Act or any regulations made thereunder;
- (e) unlawfully refuses or fails to answer to the best of his knowledge any question made to him by an officer in the exercise of such officer's functions, or fails to co-operate fully with an officer in the pursuance of such officer's duties;
- (f) unlawfully refuses or fails to comply with any requirement duly provided under this Act or under any regulations made thereunder; or
- (g) hinders an officer in the performance of such officer's duty under this Act or under any regulations made thereunder, shall be guilty of an offence against this Act

Punishment for Offences against the Act

- Any person who commits an offence against this Act or any regulations made thereunder shall, on conviction, be liable to imprisonment for a term of not more than two (2) years, or to a fine (multa) of not less than one thousand euro (€1,000) but not exceeding fifty thousand euro (€50,000) for every offence for which the person has been found guilty, or to both such fine and imprisonment. On a second or subsequent conviction such person shall be liable to a fine (multa) of not less than two thousand euro (€2,000) but not exceeding fifty thousand euro (€50,000) for every offence for which the person has been found guilty, or to imprisonment for a term of not less than one (1) year and not exceeding four (4) years, or to both such fine and imprisonment. The Court may, at the request of the prosecution, cancel or suspend all or any permits issued in terms of or in relation to this Act including by regulations or administrative instruments, or all or any licences or warrants issued to or in the name of the person found guilty in connection with the workplace where the offence was committed
- These are tried before the Courts of Magistrates (Criminal Court)

Wrongdoings that are not deemed to constitute an Offence and are subject to Administrative Penalties

- (a) failure to make the necessary filings with the Authority as required in terms of this Act and any regulations made thereunder;
- (b) failure to keep any form of document, register, general register, report and list as required in terms of this Act and any regulations made thereunder;
- (c) the omission of a required entry in a register;
- (d) failure to carry out a suitable, sufficient and systematic assessment of all health and safety hazards at the workplace and the resultant risks involved; and
- (e) failure to appoint workers' health and safety representative

Special Compromise Procedure

Notwithstanding any other law providing for the trial and punishment of offences, where the Authority believes that a person has committed an offence against this Act, other than in circumstances involving a fatality or when the breach is administrative in nature, the Authority may give notice in writing to such person providing the following information:

- (a) a description of the offence that the Authority believes that such person has committed;
- (b) a list of the steps to be taken by such person to remedy the offence;
- (c) whether the offence is remediable; and
- (d) a declaration that such person is required to pay a compromise fine in respect of such offence:

Provided that the Authority may not require the payment of a compromise fine exceeding fifty thousand euro (€50,000)

Where a notice in accordance with this article has been given, the person named in the notice may, within sixty (60) days of the service of the notice, accept responsibility in writing for the offence specified in the notice and within the same period of sixty (60) days, remedy the offence if the offence is remediable, and pay or undertake in writing to pay the fine indicated in the notice or such other compromise fine as the Authority may accept instead, and in any such case:

- (a) the person named in the notice shall be deemed to have committed the offence and to have admitted his guilt in respect thereof, and the compromise fine paid, or agreed to be paid, shall be the penalty to which he becomes liable to pay;
- (b) in the case of a remediable offence, if the offence is remedied to the satisfaction of the Authority and the compromise fine is paid within the period of sixty (60) days, no further proceedings may be taken against the said person in respect of the same facts

Publication of Administrative Penalties and Judgments

The Authority shall publish, on the Authority's website, any administrative penalty that has been imposed by the Authority against duty holders that have become final for any breaches of the provisions of this Act, any regulations made thereunder and administrative instruments or any compromise fine, for such amount as may be determined from time to time by regulations issued in terms of this Act.

Such information shall remain accessible on the Authority's website for such period as determined by regulations made under this Act.

The Authority shall publish any case relating to an offence against this Act or any regulations made thereunder by a duty holder on the Authority's website that have been decided against duty holders. Such publication shall remain accessible on the Authority's website until such time that it is removed from the conduct certificate of the said duty holder.

Information published includes identity of person, type/nature of breach, summary of breach/offence, decision

Questions?



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