

**The Administration's response to issues raised
at the meeting of the LegCo Subcommittee
on regulation relating to
Occupational Safety and Health
on 19 November 1998**

1. *Information on the composition of the Australian joint health and safety committee which is required at a workplace where twenty or more workers are regularly employed.*

In Australia, the establishment of a joint health and safety committee is not compulsory. Any employee may request the employer to establish such a committee at his workplace irrespective of the size of employment. The employer may agree to the request or disagree. In the latter case, he should refer the matter to the authority for decision.

A joint health and safety committee for a workplace in Australia basically consists of-

- (a) the health and safety representatives (if there are no health and safety representatives, the person or persons elected by the employees concerned); and
- (b) the person or persons appointed by the employer.

The composition of a health and safety committee shall be determined by agreement between the employer, the health and safety representatives and the employees, but at least half of the members of the committee shall be health and safety representatives or persons elected by the employees. If an agreement cannot be reached on the composition of the committee, any interested party may refer the matter to the authority for a resolution.

2. *A revised definition of "confined space" having regard to members' concerns.*

We propose to adopt a new definition for "confined space", modelled on the definition in UK's *Confined Spaces Regulations 1997*, as follows:

"confined space" means any place in which, by virtue of its enclosed nature, there arises a reasonably foreseeable specified risk, and without limiting the generality of the foregoing, includes any

chamber, tank, vat, pit, well, sewer, tunnel, pipe, flue, boiler, pressure receiver, hatch, caisson, shaft or silo in which such risk arises;

A new definition for “specified risk” will be added as follows :-

“Specified risk” means a risk of-

- (a) serious injury to any person at work arising from a fire or explosion;
- (b) without prejudice to paragraph (a)-
 - (i) the loss of consciousness of any person at work arising from an increase in body temperature;
 - (ii) the loss of consciousness or asphyxiation of any person at work arising from gas, fume, vapour or the lack of oxygen;
- (c) the drowning of any person at work arising from an increase in the level of liquid; or
- (d) the asphyxiation of any person at work arising from a free flowing solid or the inability to reach a respirable environment due to entrapment by a free flowing solid.

3 *On clause 5-*

- (a) *to add a provision in respect of continuous monitoring of working environment, i.e. continuous risk assessments by a competent person whenever there is a change in the conditions of the confined space or of the work activities therein or there is reason to suspect that such change may occur, and that the change is likely to affect the safety and health of workers working therein; and*
- (b) *to define the term “continuous risk assessment by a competent person” stated above*

We propose to make the following changes to clause 5:-

- (i) in subsection (2)(a)(iii) by deleting “and” at the end of subparagraph (B) and by adding --
 - “(D) a fire or explosion in the confined space; and
 - (E) loss of consciousness of a certified worker arising from an increase in body temperature;”
- (ii) by renumbering subsections (4) and (5) as subsections (5) and (6);
- (iii) by adding --
 - “(4) For the purposes of subsection (2), where a competent person, in evaluating the extent of the risks in a confined space, is of the opinion that there is a substantial likelihood of a change in the environment leading to an increased risk from one of the hazards

referred to in subsection (2)(a) during the course of the work in such confined space, he shall recommend the use of such monitoring equipment as he considers appropriate in the circumstances and shall specify the manner of its use.”

In this way, the proprietor or contractor will have sufficient guidance on the way to tackle high risk situations and the law does not need to provide for stringent requirements which would not be necessary in a less hazardous work environment.

The following consequential amendments will be made to clause 14 on Offences :-

- (i) in subsection (1)(b), by deleting “(4)” and substituting “(5)”;
- (ii) in subsection (2)(a), by deleting “5(4)” and substituting “5(6)”.

4. *On clause (8)*

- (a) *to add a provision to cater for the continuous risk assessments by a competent person in line with the concept of continuous monitoring;*
- (b) *to consider whether the person referred to in sub-clause (b), who is stationed outside the confined space to maintain communication with the workers inside, should also be a “certified worker”;*

(a) Please see the Administration’s response under item 3 above.

(b) The person referred to in sub-clause (b) should maintain communication with the workers in a confined space, administer emergency procedures (e.g. first aid) and be capable of summoning assistance rapidly in emergencies. His role is very different from that of a worker entering a confined space to work. The training he should receive is different from the worker inside and therefore clause 11 separately requires the proprietor and contractor to provide him with the necessary instructions, training and advice to ensure the safety and health of all workers in the confined space. We do not think that such person should also be a “certified worker” because this will not contribute to the safety and health aspects of the work, but may limit the choice of the proprietor in employing such persons and increase the cost of his work.

5 *On clause 10-*

- (a) *to advise whether the suitable apparatus for reviving an unconscious worker as referred in sub-clause (2)(b) is regulated by any legislation and the minimum standard required;*
- (b) *to consider spelling out the minimum number of persons considered to be sufficient as referred to in sub-clause (3) and review whether having only one worker who is knowledgeable in using the safety equipment referred to in sub-clause (2) is adequate*

The apparatus for reviving an unconscious worker typically means a resuscitator. We shall provide in an approved Code of Practice internationally acceptable standards of the resuscitator, (e.g. BS 6850:1987 British Standard Specification for Ventilatory Resuscitators). If the proprietor or contractor should use an equipment conforming to such standards, he should be deemed to be using a suitable apparatus. Furthermore, where the resuscitator is a component of an oxygen cylinder, the cylinder is subject to control by the Dangerous Goods (General) Regulations which are administered by the Fire Services Department. As there are internationally recognized standards stipulated for the resuscitator and separate legislation governing the gas cylinder, there is adequate control on the use of such apparatus.

In regard to the number of persons required as referred to in sub-clause (3), factors to be considered include the nature of the work, the hazards inherent in the confined space in relation to the work and to the work methods proposed. These are technical details more suitably addressed in an approved Code of Practice. It is not appropriate to provide a set of requirements in the regulation as the above factors have to be assessed by a competent person against a background of the professional knowledge in such work.

6. *On clause 14-*

- (a) *to state the reasons for not providing a proprietor or contractor with an opportunity to give “reasonable excuse” or “reasonable cause” under sub-clause (1) before imposing on him a penalty for contravening the new Regulation while a competent person and a certified worker are allowed to do so under sub-clause (2) and (3) respectively; and*
- (b) *to explain the rationale and justification for setting the penalty for the offences referred to in sub-clause (2)(b) and (c) in respect of a competent person at the same level, given that the latter offence is seemingly more serious than the former one.*

In deciding whether an offence should embody the element of “reasonable excuse”, it is necessary to look at the offence itself. It is an over-simplification to state that it is always provided for in offences committed by a worker or a competent person. For example, where a competent person makes a false report (clause 14(2)(c)) or where a worker fails to carry out a number of duties under clause 13, the offences are offences of a strict liability. In other cases, we build in an element of “reasonable excuse” because such is reasonable and is consistent with practices in other regulations under the Factories and Industrial Undertakings Ordinance. For example, where a worker does something which will endanger his or other person’s safety, the prosecution has to prove that he has done it wilfully or without reasonable excuse. Similar requirements are found in regulation 20 of the F&IU (Lifting Appliances and Lifting Gear) Regulations, regulation 18 of the F&IU (Cargo & Container Handling) Regulations, regulation 11(4) of the F&IU (Goods Lifts) Regulations. As for offences committed by contractors and proprietors, they are mostly offences of a strict liability because they usually belong to the commitment of an act or failure to carry out a requirement and such act or omission is incompatible with the provision of a safe working place required by the relevant legislation. The present offences in the proposed Regulation are consistent with the practice in other FIU legislation. To illustrate this point, we are preparing a comparison of these offences with other similar offences in other FIU regulations and shall table it for Members’ reference at the meeting on 26 November 1998.