News from the Centre

This is the fifteenth edition of the Centre’s Newsletter which is produced as part of its mission to monitor and report on developments in OHS regulation. This edition includes the regular updates on OHS regulatory developments, important new research and reports, and significant recent cases.

The feature article in this edition, The Effects of Organisational Cultures on Safety, is a précis of a new Centre working paper, number 44, by Professor Andrew Hopkins. The feature article and working paper examine strategies for investigating organisational culture, discussing the merits and weaknesses of culture surveys, ethnographic research and, in particular, analysis of material assembled by inquiries into major accidents. The working paper is online at: http://ohs.anu.edu.au/publications/index.php

Two other new working papers from the Centre are working paper number 42 Evaluating Mine Safety Legislation in Queensland by Professor Neil Gunningham and working paper 43, by Professor Hopkins, A Corporate Dilemma: To be a Learning Organisation or to Minimise Liability. These working papers are also online at: http://ohs.anu.edu.au/publications/index.php.

Further information about the Centre and this newsletter

As always we welcome readers’ suggestions on articles, books and reports that might be included in forthcoming newsletters. If you have any suggestions, please email us at nrcohsr@anu.edu.au.

You can find further information about the Centre at: http://www.ohs.anu.edu.au/

If you are not a subscriber to this newsletter, you can subscribe on http://www.ohs.anu.edu.au/publications/subscribe.php.

Readers interested in the Regulatory Institutions Network, of which this Centre is part, can explore the RegNet website at http://regnet.anu.edu.au.
OHS regulation research colloquium

Of particular importance in the Centre’s work is its support for a National OHS Regulatory Research Consortium. The aim of the Consortium is to foster, develop and support an interdisciplinary, collaborative network of Australian researchers interested in OHS regulation, in order to increase the amount of high quality evidence-informed and policy focused research into OHS regulation. At the Centre’s annual colloquium held in February 2006, fourteen OHS regulation researchers participated and presented their current research work. The Colloquium was also attended by representatives of five of the Australian OHS regulators, as well as staff of the Australian Safety and Compensation Council (ASCC).

Current projects presented by OHS Regulation Research Consortium members were:

- The personal liability of company officers
- The organisational reach of OHS regulation
- OHS management systems, self-assessment and the effectiveness of performance-based legislation
- Regulatory compliance by micro and small business; the role of ‘place’
- Injured and ill workers - proposals from a South Australian inquiry
- Recent developments in mine safety regulation
- Risk and coal mine governance
- The Gretley coal mine disaster: reflections on the finding that mine managers were to blame
- Prosecution: deterrent or disincentive
- The use of mines regulatory breach information for directing mine safety
- The relationship between hours of work, and accidents and incidents in the Australian coal mining industry
- Safety, security, politics and fact: shaping the regulatory solution
- Labour market experience of teenage workers in the 21st century
- Reinforcing safe design – engaging customer and end user experience
- The role of industry-based OHS inspectorates
- Characteristics of the occupational light vehicle user population in New South Wales
- Fatigue and safety in light truck drivers
- Patterns of job strain in working Victorians: enabling evidence-based policy and practice
- Psychosocial and other working conditions in relation to employment arrangements in working Australians

Some of these presentations are online at:

Developments in regulation

International – The International Labor Organisation (ILO) has adopted a new convention for the shipping industry that aims to consolidate the many ILO standards adopted over the last 80 years. The new Maritime Labour Convention sets out seafarers’ rights to decent conditions of work, on a wide range of subjects and is intended to be globally applicable and uniformly enforced. More information is online at:

UK - In December 2005, the Health and Safety Commission (HSC) agreed in principle that the law should be changed to impose duties upon directors and has asked the Health and Safety Executive (HSE) to develop legislative options. Government approval would still be required. More information is at:
http://www.corporateaccountability.org/directors/duties/current.htm
Developments in regulation (continued)

Australia – At its February 2006 meeting the Council of Australian Governments (COAG) resolved to ask the Australian Safety and Compensation Council (ASCC), as an immediate priority, to develop strategies to improve the development and uptake of national (OHS) standards, with particular emphasis on: (1) reducing the time taken to develop national OHS standards; (2) undertaking state/territory consultation with local stakeholders in parallel with national consultation to inform the development of the national standard and ensure agreement to nationally-consistent arrangements; and (3) agreeing specific time frames for implementation so that each jurisdiction will implement the standard or code within an agreed time frame. COAG also resolved to ask the Workplace Relations Ministers’ Council to identify priority areas in principal OHS Acts in each State and Territory that should be harmonised, with a report back to the Workplace Relations Ministerial Council by the end of 2006 on recommended strategies for implementing all of these reforms. The reforms are also to be achieved without a reduction or compromise in standards for legitimate safety concerns in current OHS standards. More information is online at: http://www.coag.gov.au/meetings/100206/index.htm

Australia – OHS regulators in Australia and New Zealand are targeting demolition work and any associated asbestos removal work in a six week trans-Tasman enforcement initiative which commenced on 20 February 2006. Inspectors are visiting commercial and residential demolition sites to check on how contractors are managing this work, to distribute guidance material and to take enforcement action wherever dangerous practices are found. Areas addressed include the proper identification of asbestos, site security, falls from heights, overhead protection, traffic management and the preparation of a demolition work plan. Inspectors are also looking out for outstanding examples of best practice and innovative solutions to asbestos and demolition hazards, for promotion throughout the industry around Australia and New Zealand. More information is online at: http://www.workcover.nsw.gov.au

Also in Australia – The seventh Comparative Performance Monitoring was published by the Australian Workplace Relations Ministers’ Council. The report compares the Commonwealth, state and territory OHS and workers’ compensation systems, as well as providing national statistics. Nationally, the transport and storage industry reported the highest incidence of workplace injury and disease in 2003-04, followed by the manufacturing industry, with these industries being the only ones to experience an increase in the incidence rate of compensated claims (one week or more of compensation). The rate decreased or remained stable in other industries. The construction, and transport and storage industries recorded the highest number of fatalities. However, overall the average Australian fatality rate has fallen steadily over the last five years to 2.3 per 100,000 employees, with Victoria and New South Wales recording the largest falls in fatalities (down from 55 to 22 in Victoria and down from 80 to 43 in New South Wales, in the period 1999-2000 to 2003-2004). The report is online at: http://www.workplace.gov.au/cpm

Commonwealth employment - The Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2006 (No. 2) establish a regulatory regime for the storage and handling of dangerous goods and impose obligations on employers, manufacturers, suppliers and installers of dangerous goods. The regulations will apply from May 2006 and will give effect to the National Standard for the Storage and Handling of Workplace Dangerous Goods (NOHSC: 1015 (2001), which was declared in 2001. More information is online at: http://www.comcare.gov.au

Australian Capital Territory – The national Code of Practice for the Safe Removal of Asbestos will come into effect in the ACT on 1 May 2006. The code is given effect under the ACT’s Dangerous Substances Act. More information is online at:: http://www.workcover.act.gov.au

New South Wales – In its review of the NSW OHS Act, WorkCover received a substantial amount of comment on the Act’s objectives, general duty framework and enforcement approaches which is currently being analysed. However, WorkCover sought further comment on some specific issues which did not elicit a significant response, or where responses indicated there might have been some misunderstanding. New discussion papers were released on clothing outworkers, recognition between safety inspectorates, offences for fraudulent activities, the role of codes of practice and controllers of work premises. Comment on these closed in February 2006 and the OHS Act review team is now analysing the issues raised through public consultation with a view to reporting to the Minister in the first half of 2006. A Final Report on the review is to be tabled in both Houses of Parliament and available on the WorkCover Website by June 2006. More information is online at: http://www.workcover.nsw.gov.au
Developments in regulation (continued)

Also in New South Wales – The Independent Commission Against Corruption (ICAC) found three former NSW WorkCover officers issued thousands of fake work licences and recommended that the DPP consider prosecuting two of these former employees as well as 16 others involved in their distribution. ICAC also made recommendations for WorkCover to improve its management and monitoring of the licensing system to minimise the opportunities for corrupt conduct in the future. Particular areas of concern were sharing of logon details and passwords, lack of supervision and control in approving and printing certificates, and lack of reconciliation between certificates issued and application fees received. ICAC’s report is online at: http://www.icac.nsw.gov.au/index.cfm?objectID=22564DFA-0A3B-3846-B5C91F8796C57F67&flushcache=1

Queensland – The state’s Parliament has passed new laws limiting the hours and types of work that children can perform. The Child Employment Act, which will come into effect on 1 July 2006, provides that children between 13 and 15 years of age inclusive will only be able to perform ‘light’ work, for a maximum of four hours on school days. No more than 12 hours per week may be worked during the school term, and children under 18 will be prohibited from working in all forms of adult entertainment. Employers will be required to keep detailed records of child employees, and to provide induction packages and age-appropriate training, including training in OHS. Further information is online at: www.legislation.qld.gov.au.

South Australia – The Industrial Relations Commission has published guidance on how it will manage the conciliation and mediation of workplace bullying matters under s 55A of the state’s Occupational Health, Safety and Welfare Act. The Guide to the Conciliation and Mediation of Workplace Bullying Matters outlines the process to be followed by the Commission if a SafeWork SA inspector refers a bullying matter to the Commission after investigating a complaint. The process may involve conciliation or mediation. Parties can be formally represented by a legal practitioner or registered agent, with the consent of the Commission Member dealing with the matter. Consent will generally only be granted where all parties agree or where the Member is satisfied that representation is appropriate. The guide is online at: http://www.industrialcommission.sa.gov.au/ezi_pdf/guides/bullying_in_workplaces.pdf

Tasmania – Draft Workplace Health and Safety Amendment (Infringement Notices) Regulations have been released for public comment until 10 April 2006. The Workplace Health and Safety Act at Part 6A provides for the use of infringement notices as an enforcement measure and offences relating to these provisions are to be prescribed in regulations. The draft regulations are at: http://www.wst.tas.gov.au/resource/draftworkpla.htm

Victoria – The government has confirmed its commitment to supporting the rights and conditions of Victorian workers in its response to a parliamentary inquiry into labour hire in the state, with plans to more closely monitor the OHS of workers employed by Victorian labour hire firms. Recommendations of the inquiry include: release of OHS guidance for labour hire agencies and host employers to clarify OHS duties; revision of WorkCover’s premium and data collection systems to allow more effective identification of the performance of both labour hire agencies and host employers; OHS information seminars for labour hire employers and host employers; and an increased focus on OHS compliance and enforcement of labour hire employers and those who engage labour hire workers. More information is online at: http://www.workcover.vic.gov.au

Victoria – The state government has announced an independent inquiry into OHS regulation in the state’s resources industries (mining, quarrying and petroleum). The inquiry is to investigate and report on OHS performance, identify national developments in mine safety, consider the effectiveness of the Department of Primary Industries as an OHS regulator and the advantages or disadvantages of the Victorian WorkCover Authority taking over this role, and make recommendations on the future management of OHS in this sector.

Also in Victoria – WorkCover has produced guidance for architects, engineers, building design professionals, draughters, and designer-builders who undertake projects intended to be a workplace. These persons have duties for the first time in Victoria, under the 2004 OHS Act, with obligations commencing from 1 July 2006. The guide Designing Safer Buildings and Structures aims to assist duty holders in developing and organising their design and decision processes, to make sure that the design enables work carried out in or around the building or structure, once it is completed, to be safe and without risk to health. The guide is online at: http://www.workcover.vic.gov.au.
Developments in regulation (continued)

Western Australia – The government has commenced the five yearly review of the state’s OSH Act, as required under that Act. The terms of reference for the review encompass the objects of the Act, its administration, operations of the tripartite OHS Commission and its committees, and other matters determined to be relevant. More information is online at: http://www.docep.wa.gov.au/Corporate/Content//Reviews/OSH/overview.html

International news

Emerging risks - A report for the European Agency for Safety and Health at Work titled Expert Forecast on Emerging Physical Risks Related to Occupational Safety and Health suggests that new solutions are demanded by changes in society, work organisation and production methods which are leading to new types and combinations of occupational risks. Based on a survey with a panel of over 60 OHS experts in fourteen European countries and the US, the report looks into emerging physical risks, that is, risks that are both new (or changing) and increasing. The top emerging risks include lack of physical activity, the impact on workers of increasing complexity of new technologies, and a greater vulnerability of low-status workers. A new underlying trend is also identified: OHS is increasingly affected by multifactorial issues. For example, call centre staff can be exposed to a combination of interacting risks, such as prolonged sitting at desks that are poorly adjusted to their personal needs, background noise, inadequate headsets, low job control, high time pressure and high mental and emotional demands. This, in turn, may lead to a combination of health problems, including musculoskeletal disorders, varicose veins, nose and throat diseases, voice disorders, fatigue, stress and burnout. The report recommends that these multifactorial and combined risks require an integrated and holistic response from policymakers. The report is online at: http://riskobservatory.osha.eu.int/risks/forecasts/physical_risks/

New program for European Foundation - The European Foundation for the Improvement of Living and Working Conditions has emphasised access to good quality jobs, better working conditions and work-life balance in its work program for 2006. The Foundation will present findings from the fourth European Working Conditions Survey and the Company Survey on Working Time and Work-life Balance. A major study and database on Employment Initiatives for the Ageing Workforce will also be unveiled. The Foundations’ program for 2006 is online at: http://www.eurofound.eu.int/publications/htmlfiles/ef0539.htm

Other developments

Fatigue – NSW WorkCover has produced various publications relevant to the Occupational Health and Safety Amendment (Long Distance Truck Driver Fatigue) Regulation 2005. These are a position paper on Fatigue Management, as well as factsheets for Employers and Head Carriers, Drivers, Consignors and Consignees and one on Driver Fatigue Management Plans. The publications are online at: http://www.workcover.nsw.gov.au

Driving vibration - The National Institute for Working Life has been involved in developing a driver’s seat for trucks which reduces vibrations by a third compared with conventional driver’s seats. The new driver’s seat, developed in partnership with a truck manufacturer, cuts vibrations from side to side and front to back, as well as up and down. More information is online at: http://www.arbetslivsinstitutet.se/workinglife/06-1/03.asp
Other developments (continued)

**Patient handling** - The National Institute for Occupational Safety and Health (NIOSH) has invited comment on the document *Evaluation of Safe Patient Handling and Movement Principles* (NIOSH Docket #072). A presentation *Safe Patient Handling and Movement Principles*, developed by NIOSH and its partners, the American Nurses Association and the Veterans Health Administration's Patient Safety Centre, to improve work practices for patient care workers, can be viewed online until May 30, 2006 at:  [http://www.cdc.gov/](http://www.cdc.gov/)

**Key research & reports**

**Governance**

S Burris, P Drahos and C Shearing, ‘Nodal governance’ (2005) *Australian Journal of Legal Philosophy* 30, 30-58. This article examines governance, the management of the course of events in social systems and, in particular, nodal governance through a plurality of actors (states, corporations, trade organisations and institutions of ‘civil society’), which form more or less connected governance networks, and employ a plurality of mechanisms (force, persuasion, economic pressure, norms creation and manipulation).

**Risk-based regulation**

J Black, ‘Managing regulatory risks and defining the parameters of blame: a focus on the Australian Prudential Regulation Authority’ (2006) *Law and Policy* 28(1), 1-30. This article examines risk-based regulation and the risk-based frameworks of regulators. Drawing on the Australian Prudential Regulation Authority (APRA) as a case study the article discusses meta-regulation (the regulation of firm’s internal self-regulation), the way that risk-based frameworks inevitably carry with them their own risks, and that risk-based regulatory frameworks have the potential to both expose and obscure socio-political and socio-economic choices about the types of regulatory failures that a regulator will tolerate.

**Enforcement**

Health and Safety Executive, *Enforcement guide*, HSE Books, Sudbury, 2006. The *Enforcement guide* provides legal guidance to HSE staff in respect of their enforcement powers and duties, and their discretion in making decisions. The guide is online at: [http://www.hse.gov.uk](http://www.hse.gov.uk)

O Lobel, *Beyond experimentation: governing occupational safety in the United States*, Legal Studies Research Paper Series Research Paper No 07-32, University of San Diego School of Law, 2006. This paper describes the expansion of third way governance-based regulation (which is neither ‘command and control’ nor market-based strategies), with reference to the US Occupational Safety and Health Administration (OSHA). The paper is online at: [http:ssrn.com/abstract=874837](http://ssrn.com/abstract=874837)

**Worker representation**


D Knowles, *Measuring the effect of health and safety advisers and roving safety representatives in agriculture*, Research Report RR417, HSE Books, Sudbury, 2006. This project assessed the effect of input from union appointed roving safety representatives (RSRs) and independent OHS advisers on the OHS performance of agricultural businesses over a two year period. Participating farms demonstrated real improvements in OHS, primarily in practical controls or skills, but also in management attitudes and competences. There was also evidence of improvements on farms visited by OHS advisers; primarily in terms of management practices including the development of better organisation and arrangements for managing OHS. The report is online at: [http://www.hse.gov.uk](http://www.hse.gov.uk).
Key research & reports (continued)

Management responsibility

M Wright, S Marsden, E Dimopoulos and J Holmes, *Health and safety responsibilities of company directors and management board members: 2001, 2003 and 2005 surveys*, HSE Research Report RR414, HSE Books, Sudbury, 2006. This report brings together the results of three surveys in 2001/02, 2003 and 2005 of the extent to which there is board level direction of OHS in large private and public sector organisations in the UK. The percentage reporting that OHS is directed at a board level has risen from 58% in 2001, to 66% in 2003 and 79% in 2005. There has been little change in the reason for board level direction, primarily greater ‘general’ concern for OHS. The majority of Directors/managers also consider that defining duties in law would be useful. The report is online at: [http://www.hse.gov.uk](http://www.hse.gov.uk).

Safety culture

M Lawrie, D Parker and P Hudson, ‘Investigating employee perceptions of a framework of safety culture maturity’ (2006) *Safety Science* 44: 259-276. This article reports on latest work to evaluate an organisational safety culture framework, based on workforce perceptions. The study provides some support for the safety culture maturity framework.

Safe design


F Nachreiner, P Nickel and Inga Meyer, ‘Human factors in process control systems: The design of human-machine interfaces’ (2006) *Safety Science* 44, 5-26. This article argues that human factors are insufficiently addressed in the design of process control systems, and that incorporating ergonomics in the design of these systems would improve effectiveness, efficiency, reliability and safety. The authors recommend that, to this end, international ergonomics standards should be applied in the design of process control systems.

B Schupp, A Hale, H Pasman, S Lemkowitz and L Goossens, ‘Design support for the systematic integration of risk reduction into early chemical process design’ (2006) *Safety Science* 44, 37-54. This article presents a tool to support design for safety in the chemical industry, from conceptual, through detailed design. This approach to design for safety involves an approach to support the different contributors to safe design and safety modelling language for conceptualising the requirements for risk control.

J Carpenter, *Developing guidelines for the selection of designers and contractors under the Construction (Design and Management) Regulations 1994*, HSE Research Report RR422, HSE Books, Sudbury, 2006. This report describes a study into the application of Regulations 8 and 9 of the UK Construction (Design and Management) Regulations 1994, and of Regulations 4 and 7 of the proposed Construction (Design and Management) Regulations 2006. These regulations require contractors, designers and co-ordinators to be competent and adequately resourced. The study collates background data, details of existing competency assessment schemes, and the views of industry. It proposes a standardised approach to defining competence and resources.

Data on occupational accidents

P Hamalainen, J Takala and K Saarela, ‘Global estimates of occupational accidents’ (2006) *Safety Science* 44, 137-156. This article provides estimates of occupational accidents in 175 countries, across eight regions. The aim is to provide a basis for detecting trends and guiding national OHS policy and decision-making.
Evidence base for OHS interventions


Major hazards

J Beebe, ‘Inherently safer technology: the cure for chemical plants which are dangerous by design’ (2006) Houston Journal of International Law, April, 1-77. This article examines the vulnerabilities of hazardous chemical manufacturing and storage facilities, and discusses ways to encourage inherently safer design technologies. The article is online at: http://ssrn.com/abstract=878344

Buncefield investigation, HSE Books, Sudbury, 2006. This is a progress report of the investigation into explosions at the Buncefield Oil Storage Depot in the UK, in December 2005. The report describes the nature of the incident and initial responses by OHS and environmental authorities. The report represents early stages of the investigation and does not extend to explaining how the incident occurred. The report is online at: http://www.hse.gov.uk.

Occupational stress

F Bond, P Flaxman and S Loivette, A business case for the management standards for stress, HSE Research Report RR 431, HSE Books, Sudbury, 2006. This report reviews the literature, in order to determine the extent to which effectively managing some or all of the six key sources of occupational stress, specified in the HSE’s Management Standards, is associated with beneficial business outcomes. These six stressors, or working conditions, are demands, control, support, relationships, role, and change. The authors conclude that there is some high quality evidence of a business case for each stressor area, although the case is stronger for some working conditions. The report is online at http://www.hse.gov.uk/

T Chandola, E Brummer and M Marmot, ‘Chronic stress at work and the metabolic syndrome: prospective study’ (2006) British Medical Journal 332: 521-525. This article reports on a study of 10,000 civil service employees in London, looked at their exposure to work stress over 14 years. The study found work stress was associated with ‘metabolic syndrome, a cluster of risk factors that increase the risk of heart disease and diabetes, and that the risk of having the syndrome increased proportionally with the level of exposure.

M Elovainio et al, ‘Organisational injustice and impaired cardiovascular regulation among female employees’ (2006) Occupational and Environmental Medicine 63(2). This article reports on a study of 57 female employees of long-term care homes, investigating ‘organisational injustice’. This combines procedural issues, including whether decision making procedures enable input from affected parties, have suppressed bias and are accurate, correctable, ethical and applied consistently, and relational elements which involves polite and considerate treatment of workers by supervisors. The researchers found that both procedural and relational injustice were related to an increase in blood pressure problems, and conclude that fairness of decision-making and managerial procedures could be important factors to address as part of overall attempts to minimise psychosocial risks at work.

Occupational violence and bullying


D Kelly, ‘review of workplace bullying: strengthening approaches to a complex phenomenon’ Journal of Occupational Health and Safety – Australia and New Zealand 21(6): 551-564. This article examines research practices in bullying, in different disciplines, in order to identify potential needs for research and prac-
Key research & reports (continued)

State Services Authority, People matter survey 2005 - main report, State Services Authority, Melbourne, 2005. This survey distributed to 52,000 Victorian public sector employees sought their perceptions of how well public sector values and employment principles are applied in their organisations. Amongst other findings, the survey found that 62% of employees considered that their workplace was free from bullying and harassment but 37% had observed these behaviours in their organisation and 21% had personally experienced it, usually in the form of psychological harassment and verbal abuse from a fellow worker or manager. The report is online at: http://www.ssa.vic.gov.au

Occupational asthma
J Lunt and J White, Psychosocial and organisational factors affecting the development and control of occupational asthma: a critical review of the literature, HSE Research report HSL/2005/43, HSE Books, Sudbury, 2005. This report examines the literature on psychosocial and organisational contributors to occupational asthma, barriers to non-compliance with occupational asthma prevention and management measures, and barriers to diagnosis and management of occupational asthma symptoms. The report is online at: http://www.hse.gov.uk.

Home based work
M Pittard, ‘Rethinking place of work: federal labour law framework for contemporary home-based work and its prospects in Australia’ (2005) Law in Context 23, 148-181. This article explores the legal framework for traditional and contemporary models of home-based work, examining some of the problems with the regulation of traditional home working and arguing that there have been some devices introduced in recent times which ameliorate but do not eliminate the exploitation of such home workers.

Hours of work and work life balance
D McCann, ‘The role of work/family discourse in strengthening traditional working time laws: some lessons from the on-call work debate’ (2005) Law in Context, 23: 127. This article discusses the regulation of working time and legal initiatives in this area, including the use of traditional working time laws to contribute towards allowing workers sufficient time to devote to their families. Focusing on laws that limit working hours the article argues that insights from the field of work/family can strengthen work time policy by challenging the underlying conceptions of working hours, rest periods and the role of working time regulation. The debate in the EU over the status of on-call work, focusing on the judgments of the European Court of Justice, illustrates these issues.

Construction
N Andonakis and M Loosemore, Barriers to implementing OHS reforms – the experiences of small subcontractors, Faculty of the Built Environment, University of New South Wales, Sydney, 2006. This study investigated the response of construction subcontractors to the NSW OHS Regulation 2001. Based on 30 face-to-face interviews with subcontractors from different trades, the study found poor awareness of the regulation and reliance by some on information from principal contractors. The study raises concern about channeling regulatory information through principal contractors rather than direct communication to sub-contractors. Implementation costs, the highly competitive environment and language differences were identified as the main barriers to effective compliance. The report is online at: http://www.cfmeu-construction-nsw.com.au/pdf/spsubcdifficultiesimplementingOHSreforms.pdf

Diving
N Bailey, J Bolsover, C Parker and A Hughes, Performance of diving equipment, HSE Research Report, RR424, HSE Books, Sudbury, 2006. This report presents a study of 54 UK diving accidents with a view to identifying contributing factors including equipment performance and failure modes, for possible feedback to manufacturers, users and Standards bodies. The report is online at: http://www.hse.gov.uk.

Police work
V Henry, Death work: trauma and the psychology of survival, Oxford University Press, New York, 2004. This is a book about the impact of death on police officers as encountered in their operational environment. Drawing on the experiences of new recruits, experienced police officers, homicide detectives and technical officers, the book analyses the psychological response to death as part of day-to-day work, and how this is influenced by culture and organisational ethos.
Key research & reports (continued)

Farm safety

BOMEL, *Exploring the influences of farming women and families on worker health and safety*, HSE Research Report RR423, HSE Books, Sudbury, 2006. This report describes a study into the influences of farming women and families on OHS, including the processes by which they influence OHS, why they do so and what effect they have. A sample of 200 women participated in the study which found that women in agriculture are influential and that the most significant influences on their attitudes are past experience, the farming press and their partner. The report is online at: [http://www.hse.gov.uk](http://www.hse.gov.uk).

OHS education in schools


Workers’ compensation and return to work

S Crichton, S Stillman and D Hyslop, *Returning to work from injury: longitudinal evidence on employment and earnings*, IZA Discussion Paper No. 1857, November 2005. New Zealand’s accident insurance system pays the direct costs of all accidental injuries and compensates workers 80% of their earnings for any time post-injury that they are unable to work. Using data from Statistics New Zealand’s Linked Employer-Employee Database on time receiving earnings compensation this paper estimates the effect of injuries on employment and benefit rates, and total income. The authors find that injuries that result in more than three months of earnings compensation have negative effects on future labour market outcomes and the magnitude of these effects increases with injury duration. Longer-duration injuries also have larger impacts on women, older workers, and workers with lower earnings or with less stable employment histories. The paper is online at: [http://papers.ssrn.com/paper.taf?abstract_id=866869](http://papers.ssrn.com/paper.taf?abstract_id=866869).

Key cases

**Twigg v Hughes and Hessey Pty Ltd [2005] QIC 65**

In increasing the penalty imposed by the magistrate on appeal from $12,000 to $30,000 in this case, Hall P in the Industrial Court of Queensland discussed the relevant sentencing principles and noted that:

The legislature has recently and over a period of time increased the level of the maximum fine. Whilst it would be wrong to magnify the precedents in a linear mathematical way it would be equally wrong to ignore the indication from the legislature that fines should increase and treat the increase as applicable only in a hypothetical worst case scenario...

The obligations imposed by the Act verge on absolute. Observance of the statutory obligations may require the doing of more than is reasonable and the expenditure of more than is reasonable. The Act does not create an exception for small business and does not provide a defence of impecuniosity. Rather, the approach of the Act, understandably in light of its objects, appears to be that those who cannot afford to ensure safety in embarking upon the undertakings and activities which are the subject of the Act, should refrain from embarking upon the undertakings and activities at all. Whilst it is appropriate to examine the financial circumstances of a Respondent with a view to avoiding oppression in sentencing, there is no justification for the granting of such indulgence to small and struggling businesses as to undermine the incentive to comply with the obligations imposed by the Act.

Blameworthiness is always a material consideration. However, caution must be exercised to ensure that blameworthiness is not taken into account in assessing the objective gravity of the offence and weighed again in mitigation.
Secure Employment Test Case [2006] NSWIRComm 38

The Labour Council of New South Wales applied to the NSW Industrial Relations Commission for a test case standard protecting the job security of employees who regularly and systematically work on a casual basis; limiting the circumstances in which an employer may utilise the services of a labour hire business; limiting the circumstances in which an employer may contract out work being performed by its own employees; and reinforcing the OHS obligations applicable to employers who engage a labour hire business and/or who contract out work (see para 2). A Full Bench of the Commission accepted evidence that contractors and labour hire employees were exposed to greater OHS risks when compared with the risks that regular employees were exposed to, and ruled that NSW awards should include a test case standard in relation to OHS which set out the OHS obligations of host employers in relation to the OHS of workers engaged through a labour hire process. The terms of the standard are as follows (see para 465).

Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer’s premises shall do the following (either directly, or through the agency of the labour hire or contract business):

1. Consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;

2. Provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;

3. Provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and

4. Ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.

Inspector McKenzie v Fujifilm Australia Pty Ltd (formerly Hanimex Pty Limited) [2006] NSWIRComm 74

The supplier of hazardous chemicals was fined $100,000 by the Industrial Court of New South Wales for supplying substances (X-Ray replenisher) to a purchaser without ensuring that the substance was safe and without risks to health when properly used, in contravention of section 18(1)(a) of the OHS Act 1983 (NSW). The supplier had supplied the substance without a material safety data sheet (MSDS), and then provided a MSDS, two months later, which did not comply with the 1994 National Code of Practice for the Preparation of MSDS or the Occupational Health and Safety (Hazardous Substances) Regulation 1996 (NSW). The concentration of glutaraldehyde in the substance, when delivered, was 50-55 per cent – ten times the concentration of the substance previously supplied by the supplier. The MSDS stated that the level was 5-10 per cent. Later when the purchaser notified the supplier of the problems with the substance (which had caused ill-health to the purchaser’s staff), a representative of the supplier cleaned the system but did not remove the product, which was used again by the purchaser, causing further ill-health to staff.

The purchaser was also prosecuted (see Inspector Marilyn Lewis v Northern Sydney and Central Coast Area Health Service [2006] NSWIRComm 61)

Naidu v Group 4 Securitas Pty Ltd & Anor [2006] NSWSC 144

In this case the plaintiff worker claimed damages for post traumatic stress disorder and major depression, which he alleged was the result of almost five years of abuse and racial vilification by his manager (see also the earlier judgment in Naidu v Group 4 Securitas Pty Ltd & Anor [2005] NSWSC 618). In the course of this second judgment in this case Adams J in the Supreme Court of New South Wales at paras 10 and 11 observed that:

10. The wrongful conduct of [the second defendant’s manager] constituted … a breach of [the first defendant’s] contractual obligation to provide a safe workplace. The discrimination and harassment policy published by the company also constituted, in my view, a condition of the employment contract with the plaintiff, in effect, that it would ensure, so far as reasonably practicable, that he would not be subjected to conduct of the kind contemplated by the policy. For the reasons given in the
Key cases (continued)

[earlier] judgment I concluded that preventing Mr Chaloner’s wrongful conduct was reasonably practicable for [the first defendant] to achieve. Even in the absence of such a policy, I considered that permitting intimidatory conduct to be inflicted on employees is a breach of an implicit term that employees are not to be placed in fear of insult or physical harm and that a course of intimidation in the workplace is a substantial breach sounding in damages.

11. Bringing these various descriptions of [the first defendant's] employment obligations together, it seems to me that it was an implied term of its contract with the plaintiff that it would not, by its servants or agents, intimidate, racially or personally vilify him, subject him to demeaning, harassing or abusive conduct or threats of such conduct or threats of violence and that it would, so far as is reasonably practicable, protect him from any such conduct occurring in the course of his employment.


Both defendants (contractor (a crane company) and principal contractor on a construction site respectively) were prosecuted under section 8(2) of the OHS Act 2000 (NSW). Both defendants argued that it was not reasonably practicable to comply with the section 8(2) duty and that the commission of the offence was due to causes over which they had no control (section 28 of the Act). The crane company argued that ‘it was not within its responsibility or legal capacity to compel [the worker] to wear a harness, and therefore it was not reasonably practicable for it to insist that [the worker] wear a safety harness’. Backman J (para 49) held that ‘section 28(a) is not concerned with the question of compulsion, rather it is concerned with what is reasonably practicable to enable compliance with the Act.’ The evidence showed that the crane company made no effort to ensure that the worker had some sort of fall protection equipment, and did not approach the principal contractor or the worker to discuss the advisability and availability of fall protection. The principal contractor argued that it was not foreseeable that the crane crew would start working without express permission or induction. Backman J, however, said that because the crew did not receive clear and specific instructions not to start without proper site induction, it was foreseeable that they might start if they were asked for assistance by the scaffolding crew. The principal contractor also argued that because the injured worker had not been able to read safety instructions, it was not reasonably practicable for the principal contractor to ensure a safe system of work. Backman J stated that if the principal contractor had tried to instruct the worker, it would have found out about his inability to read, and that instructions could have been given orally.

Inspector Steven Jones v Walker Group Constructions Pty Ltd [2006] NSWIRComm 11

The defendant principal contractor was prosecuted for failing to ensure that subcontractors followed safe working procedures while working at heights. A subcontractor had provided the defendant principal contractor with a safe work method statement which stated that the subcontractor would install anchor points for safety harnesses and would ensure that they were inspected prior to use. The subcontractor did not install anchor points and the defendant principal contractor did not identify that they had not been installed. In determining the penalty after a guilty plea, Kavanagh J at para [22] stated that:

Once a head-contractor determines to sub-contract out the particular tasks on its construction site its chief responsibility on site is quality control and safety. To perform such tasks it must perform its supervisory role with vigour. That is the failure this breach revealed: a failure of the head-contractor on a construction site to supervise the required safety systems of its sub-contractor.

Other cases noted

In Awwad v Plaspak Food Packaging Pty Ltd [2006] SAIRC 6 a host employer was successfully prosecuted under the employer's general duty in the South Australian Occupational Health, Safety and Welfare Act 1986 section 19, for failing to induct a labour hire worker.
The New South Wales Court of Appeal has recently handed down two decisions outlining the limits of an occupier’s duties for negligence at a workplace: in *Davis v Nolras Pty Ltd* [2005] NSWCA 379 the court held that the factory occupier’s common law duty of care to a contractor did not extend to requiring the occupier to warn about a defect in the premises if tradesmen of that class are accustomed to meeting and safeguarding themselves against such defects; and in *Westco Distributors v Hickey’s Transport and Ors* [2006] NSWCA 24 the court held that Westco could not be expected to provide constant supervision of the delivery process when trucks were unloaded by employee’s of a transport company – rather the obligation was for [an employee of Westco] to be available when requested.

In *Coca Cola Amatil (NSW) Pty Ltd v Pareezer & Ors* [2006] NSWCA 45, the New South Wales Court of Appeal held that a common law duty of care could exist between a principal and a contractor where the relationship was ‘extremely close’ to that of an employer and employee. Here the Court accepted that there were measures which Coca Cola could have taken to prevent the contractor (a ‘filler’) who was shot while making a delivery – Coca Cola had a duty to train the filler in armed robbery awareness and to provide security – but held that there was no causal link between the breach and the shooting, because the evidence established that the armed robber was ‘restless, hostile, aggressive, suspicious, violent’ and the filler had done everything a properly trained person would have done and was still shot. Even if Coca Cola had done everything required of it, the shooting would have still taken place.

For two cases involving unfair dismissal claims by workers dismissed for raising OHS issues, see *Unions NSW v Carter Holt Harvey Wood Products Australia Pty Ltd* [2005] NSWIRComm 2 and *Byrne and Trident Shipping Services Ltd* [2005] NSWIRComm 1197.

### Consortium members – profiles

The Centre facilitates and promotes groups of collaborating researchers conducting research into aspects of OHS regulation. In this issue we profile consortium members Jan Hayes and Tessa Keegel.

**Jan Hayes** has a background as a risk specialist and process engineer in high-risk industries including the petrochemical and aviation industries. She now works as a consultant with Halcyon Risk Management and her expertise includes facilitating qualitative risk assessment, organisational behaviour studies, chairing HAZOP studies, training and project management. Jan is currently undertaking a PhD with the Australian National University on decision making by managers in high-risk industries.

**Tessa Keegel** is a Research Fellow at the Centre for Health and Society at the University of Melbourne. She has a background in epidemiology, working in occupational dermatology and occupational dermal exposure policy. Tessa's research interests are in the field of occupational health. She is particularly interested in the ways an individual's health and well-being are contextualised within workplaces, with respect to occupational exposures and disease, and has a special interest in the ways that policy and legislation affect these interactions. She is currently undertaking a PhD at the University of Melbourne on worker participation in OHS and hazard communication in the workplace.

The Effects of Organisational Cultures on Safety

There is considerable confusion and disagreement surrounding the concept of ‘safety culture’. One crucial area of disagreement is whether every organisation can be said to have a safety culture of some sort, whether strong or weak, positive or negative, or whether only an organisation which has an over-riding commitment to safety can be said to have a safety culture. There is, however, more general agreement that each organisation has a culture (or perhaps a series of subcultures) and this culture impacts on safety. From a research perspective it is therefore interesting to study both organisational cultures and the impact of these cultures on safety.

In his recent working paper *Studying Organisational Cultures and Their Effects on Safety*, Professor Andrew Hopkins explores these issues. The full working paper is online at: http://www.ohs.anu.edu.au.

Hopkins observes that organisational culture has been defined in a variety of ways. Some definitions focus on values or attitudes (the way people think) as the key element of culture, and others emphasise behaviour or practices. Examples are culture as: observed behavioural regularities, group norms, espoused values, formal philosophy, rules of the game, climate, embedded skills, habits of thinking, shared meanings and root metaphors. These two elements, attitudes and behaviours, are not necessarily mutually exclusive as the notion of ‘the way we do things around here’ embodies shared perceptions as well as shared practices. The expression carries with it the connotation that this is the right, or appropriate or accepted way to do things, judgments which stem from shared assumptions or values.

A further concept important to clarify is the relationship of culture to ‘climate’. For some, climate is a manifestation of culture at a particular point in time, which is also directly measurable, while culture is too abstract to be measured directly and is a more enduring phenomena. Other writers see climate as referring to attitudes and culture to behaviour. However, those carrying out empirical research on safety climate or safety culture have been unable or unwilling to make these distinctions and in practice the terms appear to be used interchangeably. To some extent they are simply terms that have emerged in different academic disciplines at different times, and using different research strategies. Hopkins observes that while the distinction between culture and climate remains elusive, there are real choices to be made in terms of research strategy, as these have different strengths and weaknesses, and can be expected to yield different insights.

Some of the different strategies used to research culture in organisations are culture surveys, ethnography and major accident inquiries. Hopkins examines each of these in turn. He observes that culture surveys are the predominant strategy for studying organisational cultures and their effect on safety. These involve questionnaires administered to individuals and analysis of data aggregated to the workplace or organisational level. This facilitates statements about organisations and comparisons of one organisation with another. The survey method is well suited to studying individual attitudes and values, as well as practices. However, an important qualification is that surveys measure people’s perceptions rather than what actually happens. The survey method also provides a relatively superficial description of the culture of an organisation. Many practices are too complex to be meaningfully described in the words of a survey question. Moreover the survey method tells us very little about dynamic processes - how the organisation goes about solving its problems.

In contrast ethnographic research, which originates in the discipline of anthropology, involves researchers immersing themselves for long periods in the culture of interest and providing detailed qualitative descriptions of what they observe. Sociology, which focuses on contemporary industrial society, uses many of the same methods and theories to study organisations and their cultures. The ethnographic study of an organisation requires the researcher to spend a great deal of time in the organisation, either as a participant observer, for instance as an employee, or as non-participant observer of some sort. Similar work has also been undertaken by political scientists amongst others. Importantly, the ethnographic model seeks to minimise the researcher’s impact on the culture under investigation. This is in contrast to studies by clinicians or consultants called in to solve a problem and to bring about some change in an organisation. However, practitioners in the clinician/consultant camp may argue that a system can be better understood by those trying to change it, particularly as some aspects of organisational culture only surface as reactions to interventions.

While ethnographic research can provide a much richer account of the culture of an organisation than surveys, a question arises as to the validity of the description provided. How can we be sure that the elements of culture identified by the researcher are correct? This is usually judged by the credibility of the description to insiders who live in the culture and, at the same time, to outsiders who are trying to understand it. Most importantly, if the members of the culture recognise the description and agree that that is how it is,
The Effects of Organisational Cultures on Safety
(continued)

then the researcher can feel reasonably confident in the findings. One important draw-back of the ethnographic
method remains and this is the commitment of time it requires from the researcher. It may well be that the only
piece of ethnographic work ever carried out by a researcher is a PhD.

A third method which offers the potential for more in-depth inquiry, as well as being more time efficient,
is major accident inquiries such as rail crashes, space shuttle disasters and petrochemical plant explosions.
Hopkins argues that these are a priceless source of information about organisational cultures and the way they
impact on safety. Evidence is typically drawn from a large number of people with questioners pursuing numer-
ous lines of inquiry, probing, looking for things that might have been overlooked, exploring inconstancies and
conflicts of evidence, day after day. Proceedings are taped and many thousands of pages of transcript evidence
are generated; far more material than an individual researcher engaged in an intensive interview process could
ever produce. Moreover, the fact that witnesses can be required to give evidence to these inquiries and that
witnesses can be interrogated in quite a hostile fashion means that inquiries can gain access to information that
no interviewer could ever hope to uncover.

The transcript provides the researcher with a detailed data source which is otherwise only used to ex-
plain the particular event and has typically not been ‘mined’ as a data source to analyse organisational culture. 
Hopkins suggests that the material is often so rich and so diverse that researchers reading it are effectively im-
mersed in the world of that organisation without ever setting foot on its premises; a form of ‘armchair ethnogra-
phy’. In his working paper, Hopkins goes on to discuss the application of analysis of major accident inquiries,
drawing on his analysis of the inquiry into the Glenbrook train crash in New South Wales and the investigation
into why the Australian Air Force allowed hundreds of aircraft maintenance workers to be poisoned by exposure
to toxic chemicals over a 20 year period.

Major accident research that identifies the impact of organisational culture on safety also provides valu-
able insights into the source of that culture and hence ways in which it might be changed or modified. For ex-
ample, it is sometimes said that the key to culture change is leadership and that safety cultures or generative
cultures can most easily be brought about by installing leaders who have the appropriate vision. However, in-
quiries into organisational culture reveal that there are often less personal sources of culture which need to be
understood and counteracted if there is to be any hope of changing the organisational culture itself. These less
personal sources may include wider societal factors as well as internal organisational factors.

Hopkins concludes his paper with some suggestions for studying culture in organisations which have
not had major accidents or been the subject of inquiries. This involves drawing on the experience of analyzing
major accident inquiries but using a more focused strategy, guided by some theory about what to look for.

The full working paper and references on researching organisational culture and safety can be found
online at: http://www.ohs.anu.edu.au.