**In this Briefing**

This Work Health and Safety Briefing presents some recent research and reports from our Centre’s monitoring of Australian and international developments in work health and safety regulation and research. There are contributions relating to the harmonisation of work health and safety regulation in Australia, risk considerations and the regulation of risks, compliance and enforcement, organisational and human factors in managing health and safety at work, learning about health and safety at work, and specific hazards and risks. There are also articles relating to workers’ compensation and rehabilitation matters, including a series relating to financial incentives for improving work health and safety.

**Harmonising Work Health and Safety Regulation in Australia**


Productivity Commission, *Impacts of COAG Reforms: Business Regulation and VET*, Australian Government, Canberra, 2012. Chapter 8 of this report presents the Productivity Commission’s assessment of progress towards harmonisation of work health and safety legislation. The report notes the uncertainty that exists over the implementation of harmonised legislative frameworks in three jurisdictions (Victoria, South Australia and Western Australia). The report provides estimates of the costs to business of the transition to harmonised legislation and potential savings for businesses that operate in more than one jurisdiction. The Commission considers that without full harmonisation of regulatory regimes across all jurisdictions, there is a risk that organisations will face significant transition costs and not be able to realise the potential savings from harmonised laws. The Commission’s report is online at: [http://www.pc.gov.au/projects/study/coag-reporting/report](http://www.pc.gov.au/projects/study/coag-reporting/report)
**Harmonisation continued**


Bluff E and Gunningham N, ‘Harmonising work health and safety regulatory regimes’ (2012) 25 (2) *Australian Journal of Labour Law* 85-106. This article examines the current approach to harmonising work health and safety regulatory regimes in Australia, which relies on the cooperation of all nine Commonwealth, state and territory governments. Recognising that inconsistencies may arise in how governments initially adopt the national model instruments (the model Bill, regulations and codes of practice), and how they administer and enforce legislation the article explores how Australian governments can best ensure harmonised regulatory regimes. The article proposes ways to strengthen harmonisation efforts; with regard to the processes for implementing and maintaining, monitoring and evaluating, and overseeing and ensuring harmonised regimes. After considering each of these aspects in turn, the article sets out two alternative approaches to improve the prospects for harmonisation.

**Risk Considerations and Risk Regulation**

**Emerging risks**

Turner Gibbs M, ‘Time to re-think engineering design standards in a changing climate: the role of risk-based approaches’ (2012) 15(7) *Journal of Risk Research* 711-716. This article discusses the concern that engineers are directed to design structures using standards that are based on historical data and may be unrepresentative of the conditions that structures face. Standards for design and construction often specify the methodology by which design parameters are to be calculated from measurements of wind speeds, wave heights, flood levels and other environmental variables. However, these standards are informed by historical datasets which may not be representative of future conditions and therefore using such data may increase the likelihood of risk-resilience failures.

Abbot C, ‘Bridging the gap – non-state actors and the challenges of regulating new technology’ 39(3) (2012) *Journal of Law and Society* 329–358. This article is concerned with designing systems of regulation for new technologies, where challenges relating to uncertainty and risk, resource asymmetry, and regulatory disconnection are especially significant. The author proposes that by adopting a pluralistic, decentralised approach to regulation non-state actors can contribute in a variety of ways (either formally or informally), and help to ensure that the regulatory framework does not hamper technological development or expose the public to unacceptable risks. Public trust and confidence in the regulation of risk are also crucial in ensuring the viability of the control framework. Nonetheless, regulatory pluralism is difficult to maintain, not least because it often envisages state and industry cooperation.
**Risk regulation continued**

**Incentives to control chemical risks**

Bent J, ‘An incentive-based approach to regulating workplace chemicals (2012) 73(6) Ohio State Law Journal (forthcoming). This article examines the United States’ system for regulating work exposures to hazardous chemicals. The article argues that the current regulatory system, including a combination of OSHA regulations and state workers’ compensation programs, is not effective and, in the absence of effective regulation, information asymmetries, long disease latency periods, and other characteristics of chemical exposures thwart labour market regulation through risk/wage tradeoffs. These same characteristics also permit employers and chemical manufacturers to externalize the costs of chemical-related injury and illness. The result, the article concludes, is a level of workplace chemical exposure risk that is systematically too high, and a level of precaution that is systematically too low. The article proposes state workers’ compensation laws as a means to capitalize on incentives for employers and chemical manufacturers, arguing that these should be amended to: (1) shift the default burden of proof on causation to respondents in cases where there is no applicable OSHA exposure limit, and (2) allow employers to include chemical manufacturers as respondents in workers’ compensation proceedings for purposes of apportioning liability. These changes would be intended to result in a new push for OSHA chemical exposure limits by chemical manufacturers and employers – the entities in the best position to provide the toxicity and precaution information necessary to support OSHA regulations. The article is online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2050460

**Trends in risk regulation in Europe and the United States**

Vogel D, The Politics of Precaution: Regulating Health, Safety, and Environmental Risks in Europe and the United States, Princeton University Press, New Jersey, USA, 2012. This book examines policies towards a series of health, safety, environmental and consumer risks in the United States and Europe over the last five decades. The book traces how concerns over risks such as air pollution, food safety and agriculture, hazardous substances and consumer safety have increased in Europe and declined among the American public, with the result that regulatory leadership on these issues has shifted from the United States to Europe. More information about the book is online at: http://press.princeton.edu/titles/9752.html

McCluskey M et al, ‘The Next OSHA: Progressive Reforms to Empower Workers, White Paper No 1207, Center for Progressive Reform, Massachusetts, USA, 2012. This paper examines the need to reform the Occupational Safety and Health Act enacted by the US Congress more than 40 years ago. The paper discusses how changes to the OSH Act and associated regulations and policies could better empower workers to ensure that all workers have safe and healthy workplaces. The paper proposes strengthening education and training requirements as the first step toward empowering workers and a private right-of-action to enforce the OSH Act. Additional proposals include increasing criminal fines and gaol time for employers, civil enforcement through administrative compliance orders, inflation-adjusted penalties, procedures for investigating fatalities and arrangements for involving workers and their representatives in enforcement proceedings. The paper also examines the role and funding sources for the federal regulator OSHA. The paper is online at: http://www.progressivereform.org/articles/Next_Generation_OSHA_1207.pdf

**Understandings of risk**

Brown P and Heyman B, ‘Perspectives on the ‘lens of risk’ interview series: Interviews with Joost van Loon and Ortwin Renn’ (2012) 14(5) Health, Risk & Society 415-425. This article presents responses from interviews with two influential European social scientists about their approaches to the study of risk and its societal significance. They provide contrasting perspectives towards risk and risk research, and insights into the complexities and interlinked nature of risk considerations, and the challenges these pose to researchers and policy-makers.
Compliance and Enforcement

Black J and Baldwin R, ‘When risk-based regulation aims low: A strategic framework’ (2012) 6(2) Regulation and Governance 131–148. This article develops a strategic framework for regulators to employ when choosing intervention strategies for dealing with low risks and reviewing performance. Central to the framework is a matrix, the Good Regulatory Intervention Design (GRID), which provides a basis for categorising sites or activities on the basis of two factors: the nature of the risk and the nature of the regulatee. Using GRID, regulators can select which intervention tools to use, and determine the overall level of regulatory intensity to apply. GRID is accompanied by the Good Regulatory Assessment Framework (GRAF) for agencies to use in reviewing their performance. The article also argues that the process of developing such a framework highlighted the extent to which “low risk” and “high risk” regulation are distinct.

Bluff E, Johnstone R, McNamara M and Quinlan M, ‘Enforcing upstream: Australian health and safety inspectors and upstream duty holders’ (2012) 25(1) Australian Journal of Labour Law 23-42. This article examines how regulators inspect and enforce work health and safety legislation with upstream duty holders (designers, manufacturers, importers and suppliers), drawing on empirical research in four Australian states and relevant case law. The article argues that upstream duty holders are an increasing area of attention for inspectorates but that the efforts of these parties could be further harnessed to help stem, at the source, the flow of risks into workplaces.

Siddiki S, Basurto X and Weible C, ‘Using the institutional grammar tool to understand regulatory compliance: The case of Colorado aquaculture’ (2012) 6(2) Regulation and Governance 167–188. This article concerns the relationship between the design of regulations and levels of individual compliance. The authors applied Crawford and Ostrom’s institutional grammar tool to deconstruct regulations governing the aquaculture industry in Colorado, USA. They then assessed compliance with the deconstructed regulatory components, finding that levels of compliance varied across and within individuals, with regard to the various components. Level of compliance was also affected by the perceived appropriateness of regulations, participation in designing regulations, and feelings of guilt and fear of social disapproval.

Organisational and Human Factors in Managing Health and Safety at Work

Nordlöf H, Wijk K and Lindberg P, ‘A comparison of managers’ and safety delegates' perceptions of work environment priorities in the manufacturing industry’ (2012) 22(3) Human Factors and Ergonomics in Manufacturing and Service Industries 235–247. This article presents the findings of a study investigating the attention and priority given to different work environment factors in 142 small and medium manufacturing companies in Sweden, as perceived by managers and safety delegates. Participants answered a 43-item questionnaire covering seven areas of the work environment and priority-ranking. The findings show how the two groups differed in their perceptions about the extent to which different work environment factors were attended to.

Hopkins A, Disastrous Decisions: The Human and Organisational Causes of the Gulf of Mexico Blowout, CCH Australia, Sydney, 2012. This book examines the human and organisational factors that contributed to the Deepwater Horizon disaster in 2012, in which 11 people lost their lives and untold damage was done to the environment. The book explores what people did, why they acted as they did from their own perspectives of the situation they were in, and the organisational factors that encouraged them to think and act in this way.
Organisational and human factors continued

Zanko M and Dawson P, ‘Occupational health and safety management in organizations: A review’ (2012) 14(3) International Journal of Management Reviews 328-344. This article reviews the OHS literature from the standpoint of management. Taking into consideration contributions from psychology, sociology, industrial relations and management studies, the article calls for OHS to be placed on the research agenda of management scholars. The article advocates greater conceptual development, empirical study and theoretical reflection to complement policy and practice contributions in the literature, and proposes extended case studies as the means to examine OHS in context and over time in particular workplace settings. The article is online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2127979

Van den Broek D and Dundon T ‘(Still) up to no good: reconfiguring worker resistance and misbehaviour in an increasingly unorganized world’ (2012) 67(1) Relations Industrielles 97 -121. This article discusses worker resistance and a range of informal worker behaviours and forms of resistance that have emerged in response to decollectivizing strategies by employers.

Learning about Health and Safety at Work

Laberge M et al, ‘Supervision of apprentices in semiskilled trades: program stipulations and workplace realities’ (2012) 67(2) Relations Industrielles, forthcoming. This article reports on an intervention study carried out with the aim of preventing workplace injury for students enrolled in vocational training for a semiskilled trade (TST) in Quebec, Canada. The article outlines discrepancies between the institution-prescribed parameters for TST supervision and workplace realities. With the goal of determining foundations for workplace injury prevention programs, the article discusses aspects of the social setting encountered by apprentices upon entering the workforce, and specifically communications with colleagues and access to guidance and support in the workplace. Access to supervision and guidance was not always promptly provided, and apprentices were left without structured help and support, in diverse contexts and settings. The article proposes ways to develop flexible teaching and learning tools which can apply or be adapted to a variety of work contexts, and revision of the traditional supervisor-apprentice partnership model in order to maximise the use of valuable on-site resources and to ensure apprentices develop skills to stay healthy at work. The article is online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2099257

Cloutier E, Ledoux E and Fournier P-S, ‘Knowledge transmission in light of recent transformations in the workplace’ (2012) 67(2) Relations Industrielles, forthcoming. This article discusses how, in the context of changing demographics and work transformations, there are concerns about knowledge management, and sustaining the experiential knowledge and skills developed by workers to cope with work and protect themselves from risks to health and safety. The article presents three case studies, conducted in Quebec, Canada and each focused a specific occupation (film technicians, food service helpers, and homecare nurses) with the aim of describing the impact of precarious employment, flexible management practices and work intensification on knowledge sharing in real work situations. The research suggests that by undermining work teams and increasing the workload of experienced workers, these changes hinder the knowledge sharing process. Work teams are continually being reconfigured, which can demotivate experienced workers who constantly have to initiate new recruits despite already having a work overload. Possible avenues for research are proposed with a view to helping organisations support experiential knowledge transfer for organisational performance and the preservation of worker health and safety. The article is online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2099479
Learning continued

Nielsen M, ‘Adapting ‘the normal’ – examining relations between youth, risk and accidents at work’ (2012) 2(2) Nordic Journal of Working Life Studies 71-85. This article examines how safety is experienced and practiced among young workers, offering insights into their narratives of risk situations at work, and how they talk about and relate to dangerous situations they have experienced themselves.

Specific Hazards and Industries

Manual tasks

Callison M and Nussbaum M, ‘Identification of physically demanding patient-handling tasks in an acute care hospital’ (2012) 42(3) International Journal of Industrial Ergonomics 261-267. This article reports research investigating whether nurses in acute care facilities have similar exposure to the demanding patient handling tasks that cause musculoskeletal disorders, as nurses in long-term health care facilities. The study identified, described and ranked patient-handling tasks, and concluded that generalising across health care facilities may lead to incorrect assumptions about the nature of physical demands placed upon nurses, and the nature of control measures required.

Hours of work

(2012) 38(4) Scandinavian Journal of Work, Environment and Health. This edition of the journal presents a series of article relating to working hours. The articles addresses: self-rostering in shift work and the effects on working hours, schedule satisfaction, recovery and health; impaired glucose tolerance among shift workers; the relationship between shift work and metabolic syndrome; gender differences in the effect of working hours on work-related injuries; night work, breast cancer and preventive options.

Zhao I, Bogossian F and Turner C, ‘A cross-sectional analysis of the association between night-only or rotating shift work and overweight/obesity among female nurses and midwives’ (2012) 54(7) Journal of Occupational and Environmental Medicine 834-840. This article presents the findings of a cross-sectional study measuring the relationship between rotating shift work or night-only shift work; and overweight and obesity; and taking into account other confounding variables relating to lifestyle, general health status and work plans. Among the 2086 participants, almost 31.7% were overweight and 27.1% were obese. The authors found that after adjusting for confounding variables rotating shift work was associated with both overweight and obesity; and night-only shift work was associated with obesity, but not overweight.

Construction fatalities

Hale A, Walker D, Walters N and Bolt H, ‘Developing the understanding of underlying causes of construction fatal accidents’ (2012) 50(1) Safety Science 2020–2027. This article reports a study of 26 fatal incidents in the construction industry which was used to pilot a method for investigating and analysing the underlying causes. The study was conducted for the UK Health and Safety Executive and the method was based on the Human Factors Analysis and Classification System (HFACS), which analyses errors and task level factors, organisational, regulatory and wider market and societal factors. For the 26 fatal incidents the study showed a concentration of underlying factors associated with inadequacies in planning and risk assessment, competence assurance, hardware design, purchase and installation, and contracting strategy.
Workers’ Compensation and Return to Work Matters

Financial incentives

*Policy and Practice in Health and Safety* (2012) 10(1). This issue of the journal presents a series of articles concerned with experience rating and financial incentives under workers’ compensation schemes. The various contributions draw together the literature, studies and experience with different systems and their influence on prevention and return to work outcomes.

Guinnane T and Streb J, *Incentives that Saved Lives: Government Regulation of Accident Insurance Associations in Germany, 1884-1914*, Discussion Paper No 1013, Yale University Economic Growth Center, Yale University, 2012. This paper discusses the German compulsory accident insurance system introduced in 1884. The paper argues that while the system achieved the goal of compensating workers it was less successful in regard to its second goal - limiting the growth of work-related accidents. The paper attributes this failure to faulty incentives whereby the experience-rating system affected group rather than firm experience, leaving firms with little hope of saving on insurance contributions by improving the safety of their own facilities. The paper concludes however that even with the flawed system, more consistent use of financial incentives by insurance groups would have reduced industrial accidents earlier and more extensively. The paper is online at: [http://www.econ.yale.edu/growth_pdf/cdp1013.pdf](http://www.econ.yale.edu/growth_pdf/cdp1013.pdf)

Compensation and return to work

*American Journal of Industrial Medicine* 2012 (55). This special edition of the journal examines workers’ compensation from a human rights perspective, recognising that injured workers, particularly those with severe injuries, often experience workers’ compensation systems as stressful, demeaning and difficult to obtain adequate benefits from. The human rights perspective provides a framework for analysing workers’ compensation with respect to the dignity and economic security of injured workers.


(2012) 38(2) *Scandinavian Journal of Work, Environment and Health*. A series of articles in this edition of the journal deal with return to work matters including: how return to work methods should be evaluated; the Danish national return to work program; and return to work after particular injuries, disease and disorders including common mental disorders, musculoskeletal disorders, breast cancer and traumatic hand injuries.