Decriminalisation of Health and Safety at Work in Australia

Professor Richard Johnstone
The Griffith Law School, Griffith University, Queensland and Adjunct Professor, The Australian National University
For communications contact R.Johnstone@griffith.edu.au

March, 2012
About the Centre

The National Research Centre for OHS Regulation (NRCOHSR) is a research centre within the Regulatory Institutions Network (RegNet) at The Australian National University (Canberra), and operates in association with Griffith University (Queensland). The NRCOHSR conducts and facilitates high quality empirical and policy-focused research into work health and safety regulation, and facilitates the integration of research into regulation with research findings in other areas of regulation. The NRCOHSR also encourages and supports collaborating researchers to conduct empirical and policy-focused research into work health and safety regulation.

The NRCOHSR is funded by WorkCover New South Wales, WorkSafe Victoria and Workplace Health and Safety Queensland to publish to monitor, document and analyse Australian and international developments in work health and safety regulation and research, and related areas of regulation, and to publish a web-based series of working papers relating to work health and safety regulation.

Address for correspondence

National Research Centre for OHS Regulation
Regulatory Institutions Network
Coombs Extension, Building 8
Cnr Fellows and Garran Road
The Australian National University
Canberra, ACT, 0200
Email: nrcohsr@anu.edu.au.

Disclaimer

The views expressed in this paper are the author’s alone and do not reflect any formal opinion of the National Research Centre for OHS Regulation, the Regulatory Institutions Network or The Australian National University. They are provided for the purposes of general discussion. Before relying on the material in this paper, readers should carefully make their own assessment and check with other sources as to its accuracy, currency, completeness and relevance for their purposes.
Introduction

This paper analyses the approach to enforcement of Australian work health and safety regulatory agencies. On one level it would appear that there has been a renewed interest in stronger enforcement – including more robust use of prosecution – of the Australian work health and safety statutes since the early 1980s. Certainly, as this paper will show, the maximum financial penalties for work health and safety offences have increased dramatically in that period, prosecution is more prominent, and in some cases the fines imposed by the courts have been substantial. The paper argues, however, that despite the rhetoric of stronger enforcement and more robust prosecution, the dominant ideology of work health and safety enforcement — ambivalence about whether work health and safety offences are ‘really criminal’ and viewing prosecution as a ‘last resort’ in the enforcement armoury — still dominates the approach of Australian work health and safety regulators. Drawing on empirical research into work health and safety prosecutions in the 1980s and 1990s, the paper also argues that, because prosecution is usually focused on an ‘event’ that resulted in injury or death, the way in which prosecution is used in Australia, and the legal structure surrounding prosecution, plays a further role in ‘decriminalising’ work health and safety offences in Australia.

The paper begins with a brief reminder of how advice and persuasion became the dominant approach to enforcement endorsed so uncritically by the Robens Report. The chapter then reports on research into work health and safety prosecutions, and then critically examines post-Robens debates and developments in work health and safety enforcement in Australia since the early 1980s.

‘Hostages to History’

Until very recently, the Australian approach to work health and safety regulation has drawn heavily upon the UK regulatory model. The first Australian Factories and Shops Acts (Victoria 1873 and 1885; Tasmania 1884; South Australia 1894; NSW 1896; Queensland 1896; Western Australia 1904; and Tasmania 1910) were based upon the UK Factories Acts then in force: indeed some of the Australian statutes were largely a ‘cut and paste’ of the prevailing UK provisions (see Johnstone 2000, 2004a: 42 and 2009). Similarly, the model of work health and safety regulation proposed by the Robens Report (1972) had a major influence on the shape of the Australian work health and safety statutes introduced from the early 1970s (see Johnstone 2004a: 73-73 and 80-84). The UK influence was not
confined to legal structure and content: from 1873 the Australian work health and safety inspectorates largely adopted the UK approach to enforcement of the work health and safety statutes.

Soon after the formation of the UK factories inspectorate in the *Factory Regulation Act of 1833* there emerged an enforcement culture which focused on securing compliance with the Act through advice, persuasion and negotiation, rather than prosecuting contraventions (what could be called the punitive or deterrent approach): prosecutions were reserved for ‘serious’ or ‘wilful’ offences. For example, Bartrip and Fenn (1983: 206) describe

> an emphasis on persuasion, in all its varieties, rather than on prosecution following a detected contravention against the Act. Prosecutions were reserved for “serious” or “wilful” offences, while most detected offenders were given the opportunity subsequently to comply with the law and therefore escape liability.

Bartrip and Fenn argued that the inspectors adopted this approach because they had limited resources, and resort to persuasion and advice was the most cost-effective enforcement technique. Carson (1979 and 1980), from a more critical political economy perspective, showed that by 1833 a number of large, urban manufacturers, for various reasons, supported the provisions of the 1833 Act, including strong enforcement by the inspectorate, but that the inspectorate by the late 1840s had adopted an advise and persuade approach as a way of coping with the clash between the movement towards effective regulation and the fact that contraventions were widespread. As Carson vividly put it, heavy use of prosecution would have entailed ‘collective criminalisation’ of employers ‘of considerable status, social respectability and … growing political influence’ (Carson 1979: 48). Carson shows that the *Factories Acts* manifested the contradictory tendencies of their own development, and institutionalised the ‘ambiguity’ of factory crime, so that it was not seen as ‘really criminal’ (Carson 1980); frequently breached and substantially tolerated in practice (that is, ‘conventionalised’) (Carson 1979). This was reinforced by the fact that, at the initiative of inspectors in order to facilitate enforcement, from 1844 the *Factories Acts* generally imposed strict liability. A further factor tending to undermine the ‘criminality’ of work health and safety offences is the fact that since the early Factory Acts, most offences have been ‘inchoate’, in that they can be committed by work conditions that put workers at risk of injury, disease or death regardless of whether or not injury, disease or death actually eventuates.
It is important to remember that this approach to enforcement, dominant since the late 1840s, was and is historically contingent, the result of the particular historical circumstances facing the early UK factory inspectors. Nevertheless, this differentiation of work health and safety crime from ‘real’ crime has been widely accepted by researchers, regulators, lawyers and the community in Australia and in the UK, and this suggests that the ideologies of the ‘ambiguity’ and ‘conventionalisation’ of work health and safety crime have become deeply embedded in the Australian and UK discourse about work health and safety enforcement. One of the many reasons for this is that the advise and persuade approach and an under-resourced inspectorate were strongly endorsed by the Robens Committee (Nichols 1997: chapter 3).

The Australian Approach to Work Health and Safety Enforcement

It would appear that the Australian inspectorates immediately adopted the advise and persuade approach to work health and safety enforcement. For example, the Chief Inspector of the Queensland Inspectorate wrote (Annual Report 1897: 6 and Maconachie 1986: 81) that inspectors sought to ‘secure compliance with the provisions of the Act … without having to recommend stronger measures than persuasion’. The Chief Inspector of the Victorian Factory and Shops inspectorate in the period 1962 to 1973 wrote that (Prior 1985: 54):

Most inspectorates … see as a failure any inspector who constantly has to launch prosecutions in order to obtain compliance. They see the legislation they administer as being remedial rather than punitive in nature, i.e. they are there to improve the conditions of work, not to make the employer or employee suffer penalties for breaches of the law. ...

This approach to enforcement was still the norm during the last decade. During this period, the nine Australian work health and safety inspectorates averaged about one inspector per 10,000 employees (Workplace Relations Ministers’ Council 2008 and 2010), or between 1,000 and 2,300 workplaces per inspector (Productivity Commission 2010: 107, Table 5.5). This suggests that it was highly unlikely that there were enough inspectors to visit all workplaces over the cycle of a few years, let alone make frequent inspections to promote compliance. The Productivity Commission’s (2010: 115, Table 5.9) data for
2008-9 showed that the number of inspections made by each inspectorate varied considerably, as Table 1 shows.

**Table 1: Total Number of Inspections Made by Work Health and Safety Inspectors in 2008-2009**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cwlth</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>SA</th>
<th>WA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total inspections</td>
<td>580</td>
<td>13452</td>
<td>42169</td>
<td>16852</td>
<td>19934</td>
<td>11339</td>
<td>6280</td>
<td>4007</td>
<td>2304</td>
</tr>
</tbody>
</table>

Source: Productivity Commission 2010, p 115, Table 5.9. See original table for footnotes qualifying the data further.

Where inspectors did take enforcement action, it was mostly to advise or educate duty holders. Table 2 shows that where formal enforcement action was taken, the dominant method was to use administrative sanctions, with the improvement notice (requiring a duty holder to remedy a specific contravention of the work health and safety Act within a specified time) used far more than the prohibition notice (directing that an activity stop until an immediate risk to health and safety was mitigated) or the infringement notice (on-the-spot fine, and see further the discussion below).
Table 2: Enforcement Action Taken by Work Health and Safety Inspectorates in Australia 2001-2010 by Jurisdiction

<table>
<thead>
<tr>
<th>Year</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>WA</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
<th>ACT</th>
<th>Aust Gov</th>
<th>Total Aus</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001–02</td>
<td>1,471</td>
<td>n/a</td>
<td>99</td>
<td>n/a</td>
<td>n/a</td>
<td>71</td>
<td>0</td>
<td>n/a</td>
<td>1,641</td>
<td></td>
</tr>
<tr>
<td>2002–03</td>
<td>1,289</td>
<td>n/a</td>
<td>289</td>
<td>n/a</td>
<td>n/a</td>
<td>242</td>
<td>0</td>
<td>n/a</td>
<td>1,820</td>
<td></td>
</tr>
<tr>
<td>2003–04</td>
<td>915</td>
<td>n/a</td>
<td>488</td>
<td>n/a</td>
<td>n/a</td>
<td>31</td>
<td>0</td>
<td>n/a</td>
<td>1,434</td>
<td></td>
</tr>
<tr>
<td>2004–05</td>
<td>1,652</td>
<td>n/a</td>
<td>462</td>
<td>n/a</td>
<td>n/a</td>
<td>7</td>
<td>8</td>
<td>n/a</td>
<td>2,130</td>
<td></td>
</tr>
<tr>
<td>2005–06</td>
<td>1,195</td>
<td>n/a</td>
<td>499</td>
<td>n/a</td>
<td>n/a</td>
<td>47</td>
<td>28</td>
<td>n/a</td>
<td>1,769</td>
<td></td>
</tr>
<tr>
<td>2006–07</td>
<td>726</td>
<td>n/a</td>
<td>612</td>
<td>n/a</td>
<td>n/a</td>
<td>173</td>
<td>8</td>
<td>n/a</td>
<td>1,519</td>
<td></td>
</tr>
<tr>
<td>2007–08</td>
<td>620</td>
<td>n/a</td>
<td>643</td>
<td>n/a</td>
<td>n/a</td>
<td>37</td>
<td>201</td>
<td>13</td>
<td>1,514</td>
<td></td>
</tr>
<tr>
<td>2008–09</td>
<td>686</td>
<td>n/a</td>
<td>506</td>
<td>n/a</td>
<td>n/a</td>
<td>49</td>
<td>0</td>
<td>10</td>
<td>1,251</td>
<td></td>
</tr>
<tr>
<td>2009–10</td>
<td>688</td>
<td>n/a</td>
<td>393</td>
<td>n/a</td>
<td>n/a</td>
<td>56</td>
<td>0</td>
<td>6</td>
<td>1,143</td>
<td></td>
</tr>
</tbody>
</table>

Note that these figures do not record the fact that in Queensland a great proportion of prosecutions over the past decade have resulted in fines without conviction. This is discussed briefly near the end of this paper.

Table 2 shows that prosecution was taken relatively infrequently, and the prosecution data for the state initiating the most prosecutions, New South Wales, clearly shows that the prosecution rate, having risen significantly in the 1980s, was falling markedly. Although the work health and safety statutes impose absolute liability offences, qualified by ‘reasonably practicable’, and therefore do not require prosecutors to prove intention of any kind on the part of the defendant firm, prosecutions generally are only taken because the inspectorate considered that the defendant had been ‘morally blameworthy’ in its contravention of the work health and safety legislation (see Johnstone 2003: chapter
3 and 84). In sum, although it would appear to most observers of work health and safety regulation in Australia that regulators have taken a far more robust approach to enforcement since the early 1980s, including a greater use of prosecution, this section of the paper shows clearly that, in fact, work health and safety offences have been ‘conventionalised’ – that is rarely prosecuted.

**Research on Work Health and Safety Prosecutions**

A major qualitative empirical study of 200 work health and safety prosecutions in Victoria, Australia from 1986 to 1998 showed how work health and safety offences are ‘decriminalised’ in another sense when a prosecution is taken (Johnstone 2003). One of its findings was that the average fine imposed by magistrates’ courts in successful prosecutions of work health and safety offences during the period of the study was 21.6 per cent of the maximum fine available for each offence prosecuted. Stated in absolute terms, the average fine in 1983 was just over A$294 (14.45 per cent of the possible maximum fine), in 1986 just over $402 (20.94 per cent), in 1990, five years after a new Occupational Health and Safety Act 1985 came into force with much higher maximum penalties, A$2836 (22.92 per cent); in 1994 just over $7808 (22.4 per cent), in 1997 just over A$7954 (21.1 per cent) and in 1999 just over A$14 673 (26.7 per cent). These are not fines that would be likely to have much of a deterrent effect in anything other than a small firm.

The study suggests that one explanation for the low penalties had to do with the ‘event focus’ of prosecution and the ease with which the defendant's legal representatives could use this event focus to decontextualise the offence and make it appear far less serious than it actually was when presenting arguments to the court in mitigation of penalty. I noted earlier in the paper that work health and safety offences are ‘inchoate’, in the sense that a contravention can occur before an injury or fatality occurs. Nevertheless, the vast majority of work health and safety prosecutions in Australian courts focus on an ‘event’ – a work-related incident leading to an injury or death. Indeed, the prosecution policies of all of the work health and safety regulators specified that the usual trigger for a prosecution would be where an injury or fatality had taken place. The study of prosecutions in Victoria (Johnstone 2003: 91-93) found that 87 per cent of prosecutions were initiated after an injury or fatality at work, and there were similar findings in a 1996 study in New South Wales (see Gunningham, Johnstone and Rozen 1996). One of the
consequences of this ‘event focus’ of prosecution is that focusing on a specific incident ‘splinters’ the event from its broader context (see Mathiesen 1981: 63; Johnstone 2003: 208) and focuses the court’s attention on the incident, and away from the underlying system of work, the defendant’s approach to the systematic management of work health and safety, and broader features such as production pressures that override health and safety concerns. This is exacerbated where the prosecutor is forced by the rules of criminal procedure (for example, the ‘rule against duplicity’: see Johnstone 2003: 110-112) to issue a number of charges focusing on different aspects of the single event, such as training, instruction, supervision and the work system.

Once the event is drawn out of its context, the defendant, in mitigation of penalty, can keep the court’s attention on the minute details of the event, and away from broader structural concerns. The study found that defence counsel used a number of very common arguments to further ‘isolate’ the event from its work health and safety context.

The first technique was to use the detailed scrutiny of the event to shift the blame for the event onto another person — most commonly the injured worker (see Johnstone 2003: 211-215), but also onto work health and safety inspectors who had ‘missed’ the contravention in their previous inspections, or onto the seller of plant who had supplied defective plant to the defendant.

A second technique was to argue that the defendant was a ‘good corporate citizen’, with an unblemished record and a good attitude to work health and safety (which occasionally included reference to the good character of individuals running the firm, or firm’s contribution to the community). This was a very difficult plea for the prosecutor to challenge because the prosecutor, traditionally, has a very limited role in the sentencing process and in the cases in the study was very reluctant to challenge assertions made by defence counsel. In any event, most prosecutors did not go to court armed with detailed information about the defendant’s previous work health and safety record and attitude.

The third technique was to ‘individualise’ the event (Mathiesen 1981: 58), and to argue that the event was a ‘freak accident’ or ‘one off’ event, and that the exceptional, the unforeseeable and hence unpreventable had occurred. Most incidents, when examined in great detail, have unique features and often occur because of a coincidence of factors.
They can appear to be a ‘freak accident’ if the analysis is not conducted at the level of the whether the system of work was safe and without risks to health, and whether that safe system was properly implemented and enforced. For example, if chemicals for use in a smelter are stored in unlabelled bags together with other chemicals in unlabelled bags, the defendant might focus on a series of co-incidental events and argue that ‘evil chance’ resulted in the wrong bag of chemicals being used (Johnstone 2003: 222-3); whereas if the analysis is at the level of the system it is clear that the fault lay with inadequate labelling and storage systems. The prosecution process enabled defence counsel to construe issues as ‘isolated events’ when proper analysis would have portrayed them as ‘process failures’ (Nichols 1997: 51).

Used together, the second and third techniques suggest that the defendant has an exemplary history and approach to work health and safety, and that in the particular case before the court it had been unfortunate, and an incident had occurred because of an unpredictable confluence of circumstances.

A fourth technique was to ensure that the event was isolated in the outmoded past (Mathiesen 1981: 68) and to show that since the event things had changed: a new management team had been introduced, plant or the system of work had been improved, and so on. The consequence, it was argued or implied, was that the court had no cause to deter, rehabilitate or punish the defendant, because the contravention had been corrected.

The point of these techniques (and others: see Johnstone 2003: chapter 7) is that attention is drawn away from the defendant's approach to work health and safety management and performance and from the broader context, and focused on the event, which is then shown to be a ‘one-off’ incident, for which someone else — and not the exemplary employer — was to blame, and which is then pushed into the past with an assurance that it will not happen again, or has been addressed to the best of the defendant's ability.

This, at least partly, explains the low fines imposed upon defendants — the ‘event’ is decontextualised, individualised and sanitised, and then the defendant’s good record, cooperativeness, remorse and subsequent improved work health and safety performance is
introduced to the court, so that, in the eyes of the court, the defendant is significantly exculpated.

I also argue that the process outlined above defuses work health and safety as an issue. The court is seen to be dealing with the issue, and convicting offenders, but at the same time sanitising the underlying issues so that work-related injury and disease are not seen as a consequence of an unsystematic approach to managing work health and safety, or the result of unequal power structures, so that the underlying activity, the production of goods and services, is not threatened. In other words, the court plays a major legitimating role in work health and safety, and ensuring that the underlying issues are largely untouched. Here we can agree with the Robens Report, which correctly noted (Robens, 1972: para 261) that ‘the criminal courts are inevitably concerned with events that have happened rather than with curing the underlying weaknesses that caused them’, although the argument in this chapter is not just that a prosecution does not cure the contravention that led to the prosecution, but that a prosecution does not scrutinise social and economic processes underpinning work health and safety.

Of course, to maintain legitimacy, the law must appear to be just and effective – and this is achieved by the mere fact of some prosecutions taking place, and the apparently high penalties that are imposed upon some offenders. In the past 15 years, the Australian courts have imposed significant penalties. For example, in 1996 in WorkCover Authority of NSW v Thiess Contractors Pty Ltd (unreported, Industrial Court of New South Wales, Full Court, 19 April 1996), the court imposed a total fine of $175,000 for offences arising out of three separate incidents where two employees were killed and a third severely injured. In 2001, after a highly publicised gas explosion that killed two workers and seriously injured eight others brought the State of Victoria to a standstill, the Victorian Supreme Court in DPP v ESSO Australia Pty Ltd (2001) 107 IR 285 imposed a total of $2 million for 11 contraventions of the Occupational Health and Safety Act 1985 (Vic), including a number of maximum penalties to some of the charges. In August 2006 the Victorian County Court fined Foster's Australia Limited $1,250,000 for two contraventions of the employer's general duty in the Victorian Occupational Health and Safety Act 2004. One of the aggravating factors in this case was that there had been a similar incident on a similar machine just over three years before the incident giving rise to the prosecution. While there had been improvements to that machine, the machine that had killed the worker in
this case had not been altered. These types of penalties are reported in the media, and give the impression that prosecution is used to punish egregious offenders.

The argument has another strand: it suggests that this process of decontextualising and individualising prosecutions is embedded in the form of the criminal law, which has been used without modification for work health and safety offences (for elaboration of this argument, see Johnstone 2003: 276-288). The criminal law has traditionally focused on ‘events’ committed by ‘individuals’ with guilty intention (‘mens rea’). In work health and safety prosecutions the criminal law is applied, without modification, to very serious work health and safety offences, which do not require proof of mens rea, are usually committed by organisations, and are essentially concerned with a failure to take a systematic approach to eliminate risk at work as far as is reasonably practicable. In short, there is a mismatch between traditional, mainstream criminal law and the kinds of criminal offences found in the work health and safety statutes in Australia and in the UK. Unfortunately, this has had the consequence that there is a dominant view, especially amongst lawyers, that this signals that work health and safety offences are ‘not really criminal’ because they do not bear the traditional markers of ‘real crime’. In my view, the better argument is that the work health and safety statutes themselves state offences to be ‘criminal’, that putting a worker at risk is a very serious (and criminal) matter and that rather than arguing that work health and safety offences are not ‘really criminal’ because they don’t resemble ‘real crimes’, criminal law, procedure and sentencing need to be reconstructed to take account of the nature of corporate crimes and corporate criminal offending.

The Robens Report, and subsequent policy makers in Australia, have failed to take up the challenge that the existing form of the criminal law is inappropriate for work health and safety offences, and to reconstruct the criminal law so that it is effective to deter and punish work health and safety offenders. The only change to criminal procedure has been to override the effect of the rule against duplicity, so that a single charge for a contravention of a general duty offence can include particulars of the defective system of work, and inadequate instruction and supervision (see, for example, model Work Health and Safety Bill 2009, section 233). This only prevents the multiple splintering of an event in a prosecution, and does not in any way overcome the consequences of the event focus. The sentencing principles developed by the courts have, to some extent, tried to
ensure that the courts address the extent to which the defendant fell short of its duties to introduce systematic work health and safety management, but they do not specifically address the way in which the event focus decontextualises work health and safety issues or the types of arguments, outlined above, that defendants regularly use to mitigate their liability. Instead, as the remainder of this paper shows, the Australian debate about work health and safety enforcement has largely been about equipping inspectorates with a wider range of ‘enforcement tools’, and to some extent, in making the consequences of prosecution more serious. There have been no explicit attempts to reverse the process of conventionalising work health and safety offences, or of reasserting the true criminality of work health and safety offences, although, as the rest of this paper suggests, some of the work health and safety reforms of the last 20 years might be argued to have some impact on that issue.

The Australian Work Health and Safety Enforcement Debate

Since the early 1980s approaches to enforcing work health and safety statutes have been much debated in Australia. Apart from increasing maximum penalties (as discussed in the previous section), the debates have mainly been pragmatic and instrumentalist, and largely focused on developing a wider array of enforcement methods and sanctions to be used against firms and individuals contravening the work health and safety legislation. Influential in the debates has been Ayres and Braithwaite’s (1992: chapter 2) work on responsive enforcement, and also notion of ‘risk-based’ regulation.

The theory of responsive enforcement has attracted regulators because it purports to overcome the limitations of both the ‘advise and persuade’ approach and the punishment or deterrence approach (see Braithwaite, 2002: 32 and for a discussion of the perceived strengths and weaknesses of the two approaches, see Gunningham and Johnstone 1999: 111-14). It does so by advocating a judicious mix of the two approaches in some form of graduated enforcement response using a hierarchy of sanctions or ‘enforcement pyramid’ (see also Sigler and Murphy 1988 and 1991; Gunningham and Johnstone 1999, Wright et al 2004; and Braithwaite 2011). The hierarchy of sanctions includes informal advisory and persuasive measures at the bottom, administrative sanctions (for example improvement and prohibition notices) in the middle, and punitive sanctions (prosecution) at the top. As Braithwaite puts it, regulators ‘should be responsive to the conduct of those they seek to regulate’, or more particularly, ‘to how effectively … corporations are regulating
themselves’ before ‘deciding on whether to escalate intervention’ (Braithwaite 2002: 29; Ayres and Braithwaite 1992: chapter 2). The theory posits that credible enforcement must include a significant deterrence component, but targeted to offenders and circumstances where ‘advice and persuasion’ have failed, and where deterrence is likely to be most effective. Crucial to the theory is the paradox that the greater the capacity of the regulator to escalate to the top of the hierarchy of sanctions, and the greater the available sanctions at the top of the pyramid, the more duty holders will participate in co-operative activity at the lower regions of the hierarchy (Ayres and Braithwaite 1992: 39).

Critics on the left point to the pluralist assumptions underpinning responsive regulation, ‘including the idea that power in modern social orders is dispersed rather than concentrated, and that a variety of interests can be mobilised to influence the formal political agenda’ (Tombs and Whyte 2007: 153). In short, responsive regulation, including responsive enforcement, is based on a liberal political agenda, underestimates the extent and seriousness of corporate contraventions of work health and safety regulation, and fails to recognise that the concentration of power in corporations considerably shapes regulator responses to corporate crime (Tombs and Whyte 2007: 153-7). These critics also argue that it is inappropriate to begin with the assumption that employers will strive for virtue, given the structural conflict between capital and labour, and capitalist imperatives to place production ahead of work health and safety (see Slapper and Tombs 1999).

Other commentators argue that the kind of interactive (‘tit-for-tat’) and graduated enforcement strategy envisaged by Ayres and Braithwaite is often difficult to operationalise (see Johnstone 2004b: 158-9 and Gunningham 2007: 124-8). For example, for the pyramid to work in the interactive, ‘tit for tat’ sense envisaged by its proponents, the regulator needs to be expert in systematic work health and safety management, able to identify the kind of firm it is dealing with and to understand the context within it operates, and the firm needs to know how to interpret the regulators’ use of regulatory tools, and how to respond to them (Black 2001: 20). These are not easy tasks. Second, most work health and safety regulators do not have the resources to work their way up and down the pyramid with each duty holder (see further Gunningham and Johnstone 1999: 123-129), although this is not true in some industries (hazardous facilities and mining) where work health and safety inspectors can visit a single facility up to half a
dozen times each year. Further, there is a tension between the ‘tit-for-tat’ approach in responsive enforcement, where the severity of sanction is at least partially dependent on how the firm responds to the regulator, and traditional values of law enforcement which emphasise that the sanction must be proportionate to the gravity of the offence (Yeung 2004: 167-170).

For at least these three reasons, scrutiny of the ‘compliance and enforcement’ policies of each of the Australian regulators, and of the recently released *National Compliance and Enforcement Policy*, strongly suggests Australian work health and safety regulators, while claiming to have adopted ‘responsive enforcement’ and working with a hierarchy of enforcement sanctions, in fact simply choose what they consider to be the optimal sanction from the hierarchy of sanctions, based on the extent to which the firm’s work health and safety compliance falls short of the level required by work health and safety standards, the resulting level of risk to workers and others, attitude, level of cooperation, and prior compliance record of the firm. This is not ‘responsive enforcement’ in the sense envisaged by Ayres and Braithwaite, but rather a ‘one off’ proportional response to the perceived level of offending and the track record of the firm.

Another strong strand in Australian regulatory thinking about enforcement emphasises the importance of ‘risk-based’ enforcement to ensure that enforcement strategies are ‘effective’ (ensuring regulatory resources have the maximum effect on outcomes) and ‘efficient’ (reducing administrative and compliance costs, and reducing unnecessary inspections) (Hampton 2005: 4). A risk-based approach to enforcement means that inspectorates move away from random inspections to more targeted intervention, focusing on firms (and industries) creating the most health and safety risks at work (see Gunningham 2007. For an overview of different approaches to targeting, see Fooks at al 2007: 37-41). The Australian Productivity Commission (2010: 118) has concluded that Australian work health and safety regulators take a targeted or risk-based approach to enforcement.

To a large extent risk-based enforcement and the Australian work health and safety regulators’ version of responsive enforcement, described above, dovetail. One of the things they have in common is that they are built upon ‘consensus’ theories of regulation, occasionally verging into a ‘neo-liberal’ theory of regulation (to adopt the very helpful
framework articulated by Tombs and Whyte 2007: 153-160). Given the starting point for this chapter – the deep entrenchment of the ‘ambiguity’ and ‘conventionalisation’ of work health and safety crime – it is clear that public discourse about work health and safety enforcement is firmly anchored within a consensus model of regulation, where critical perspectives that do not fit the assumptions of the consensus framework rarely find their way onto the regulatory agenda.

**Expanding the Enforcement Tools**

Since the late 1980s Australian work health and safety regulators have sought ways of bolstering the sanctions in the work health and safety statutes. As the first part of this paper has argued, while some contributors to this debate (particularly some unions and academics) have been critical of the historical ‘advise and persuade’ model of enforcement, the debate has largely been framed by the ‘consensus model’ of regulation that is uniformly accepted by employers and work health and safety regulators. For regulators, the issue is largely to develop a flexible array of sanctions that ‘work’ in the sense of improving compliance. As a result, an innovative set of sanctions has been introduced, largely to strengthen the middle regions of the hierarchy of enforcement sanctions available to regulators. These new sanctions include the use of infringement notices by regulators and the possibility of accepting enforceable undertakings. Little has been done to address the perception that work health and safety offences are not ‘really criminal’.

The major initiatives with prosecution have been significantly to increase the level of maximum penalties, and to introduce a number of important non-financial sanctions (such as court-ordered publicity, modified community service orders; and corporate probation). Some governments have flirted with reforms to corporate manslaughter, but only the Australian Capital Territory has implemented corporate manslaughter reforms. Most of the other work health and safety statutes have introduced new offences with higher fines for offences exposing workers to the risk of serious illness, injury or death, and/or where there offences involved gross negligence or recklessness. In many senses, the most significant development has been the recasting of the provisions creating offences for corporate officers. The question, of course, is: to what extent do these developments reverse the public perception that work health and safety offences are not ‘really criminal’. As the rest of this paper argues, the answer to this question is ‘not much,
if at all’. Many, it can be argued, further ‘conventionalise’ work health and safety crime and/or lead to work health and safety offences assuming an even more ‘ambiguous’ nature.

**Infringement notices**

Administrative penalties applied directly by the regulator are a feature of most work health and safety regulatory regimes around the world (Fooks at al 2007: 42). From the early 1990s penalty notices or infringement notices (on-the-spot fines) were introduced in New South Wales, the Northern Territory, Queensland, Tasmania, South Australia and the ACT for at least some contraventions of the work health and safety statutes. Infringement notices enable enforcement of lesser offences in a quick, easy and inexpensive process that bypasses the courts (see Bluff and Johnstone 2003; Australian Law Reform Commission 2002: 418). Australian infringement notices tend to impose small fixed penalties: for example, the highest penalty in New South Wales and Queensland is $1,500, in South Australia $315, and in the Northern Territory $250. They are also quite inconsistent – in terms of the size of the penalties, the offences for which notices might be issued, and the persons to whom notices may be issued (see National Review into Model Occupational Health and Safety Laws 2009: 321-2).

Infringement notices are ‘intended to be a penalty for a particular episode of non-compliance and highlight that the breach is serious enough to warrant a fine while avoiding court action’ (National Review into Model Occupational Health and Safety Laws 2009: 321). There appears to be some evidence that infringement notices can provide a spur to enforcement action. Gunningham et al (1998) reported that infringement notices were perceived as an effective means of ‘getting the safety message across’; that when issued they were treated as a significant ‘blot on the record’ which spurred preventive activities; and that in some large companies infringement notices issued was seen as an indicator of the work health and safety performance of managers.

In fact, as Table 2 suggests, infringement notices are sparsely used in Australia. They are very much in the ‘consensus’ ‘compliance promoting’ tradition of work health and safety enforcement, hence their popularity with regulators. The biggest problem with their use is that they tend further to undermine the ‘criminality’, and promote the conventionalisation, of work health and safety offences because offences can be
addressed by issuing infringement notices which, by definition, are used with ‘lesser’ offences (as one inspector observed in a recent study, ‘inspectors look like traffic wardens’), and which avoid contact with the principal institutions of the criminal law, the criminal courts.

**Enforceable undertakings**

Enforceable undertakings are an Australian invention (see Parker 2004), and are promises enforceable in court. They are ‘offered’ by an individual or firm allegedly in breach of the law and, when accepted, operate as an agreement between the firm or individual and the regulator, in which the firm or individual undertakes to do or refrain from doing certain activities. The agreement effectively serves as a substitution for, or augmentation of, alternative regulatory enforcement (civil, administrative or even criminal action). If contravened, the undertaking is enforceable in court. From the early 2000s enforceable undertakings were made available under the work health and safety statutes in the Commonwealth, Victoria, Queensland, Tasmania and the ACT, and have been included in the new model *Work Health and Safety Bill 2009*, which is to be adopted by all Australian jurisdictions to replace their current work health and safety statutes.

At their most ambitious, EUs aim at to ‘build compliance’ within a firm, by stimulating management commitment; inducing firms to ‘learn how to comply’ and to institutionalise compliance; and inculcating long term change within the organisational culture itself (see Parker 2002: 43-61 and Johnstone and King 2008). They are a potentially important element in responsive enforcement because they can be tailored to the circumstances of the firm and can achieve outcomes that cannot generally be achieved in court, because of the limited range of sanctions traditionally found in the work health and safety statutes, and because prosecutions are time consuming, expensive and adversarial. They are also said to implement the principles of restorative justice, which emphasises a collaborative approach where those with a ‘stake’ in the offence come together to resolve a negotiated response (see Parker 2004).

In fact, enforceable undertakings have been little used, apart from in Queensland where 65 were accepted in the period 2003-2009 (see Johnstone and King 2008 and Johnstone and Parker 2010). Terms found in Queensland undertakings that were accepted included:
o A work health and safety management system implemented and audited to an acceptable standard;
o Other benefits to the workplace and workers (for example, improved work health and safety training, changed operational practice, and appointment of work health and safety staff);
o Benefits to industry (for example, development of training or an industry code of practice);
o Benefits to the community (organizing and funding a town health and safety day, funding work health and safety research); and
o Auditing; of both the work health and safety management system, and the undertaking itself.

Preliminary research (see Johnstone and King 2008) suggests that enforceable undertakings have the potential to be an effective sanction, if properly used. They can have a significant deterrent effect: the monetary value of enforceable undertakings in Queensland in the period 2003-8 was found to be more than six times the dollar value of the maximum possible penalty for the alleged offences that gave rise to the undertakings, and the total value of enforceable undertakings was over eight times the total of fines paid in both rejected and withdrawn matters combined (Johnstone and King 2008). The same research found indications that the effects of the enforceable undertaking process include a more systematic approach to work health and safety management; increased resources allocated to work health and safety; cultural changes within organisations; increased worker participation, direct cost savings and efficiencies, and a reduction in workplace incidents.

There are, however, good reasons to be wary of enforceable undertakings. The first difficulty is that to be used effectively, regulators have to be fully transparent and accountable, and must monitor undertakings once they are accepted (see Parker 2004). While Queensland has made some progress with these issues, generally they are still areas of weakness for Australian work health and safety regulators.

The more significant concern with enforceable undertakings is that they are clearly aligned with a consensus or compliance regulatory framework, and exacerbate the ambiguous nature of, and conventionalise, work health and safety offences, because they
enable firms to evade prosecution by offering an undertaking. Regulators have sought to address this by indicating they will not accept undertakings for very serious offences.

**Steps to Strengthen the ‘Criminality’ of Work Health and Safety Offences**

The two measures discussed in the previous section, infringement notices and enforceable undertakings, are important because they enable work health and safety regulators to design enforcement regimes so as to avoid a compliance deficit: or as the Macrory Report (2006: 24) put it ‘where non-compliance exists and is identified but no enforcement action is taken because the appropriate tool is not available to the regulator.’

But as I have already argued, this is a regulatory concern played out within a consensus framework of regulation, and seeks to find regulatory tools that ‘work’. In the rest of the paper I examine aspects of the sanctions debate that have the potential to strengthen the criminality of contraventions of work health and safety statutes.

Appleby (2003) suggests in that England and Wales it would be better for work health and safety to ‘rehabilitate the status’ of the *Health and Safety etc at Work Act 1974* for many industrial deaths by emphasising its breach is truly ‘criminal’, as work health and safety law is in fact criminal law. I agree with this proposition, except I would argue that it should apply to all kinds of work health and safety general duty offences placing workers at high levels of risk, even where a fatality does not result.

**Higher penalties**

One possible way of increasing the criminality of work health and safety offences is to signal the seriousness of work health and safety offending by increasing the financial penalties that the courts can impose for proven work health and safety offences. To a significant extent, Australian governments have sought to ratchet up penalties for breach of existing duties: for example, by the end of 2011 the maximum fines were $1,020,780 for corporations in Victoria; $550,000 for corporations in New South Wales ($825,000 for repeat offences); $500,000 in Western Australia ($625,000 for repeat offences); $300,000 in South Australia and $550,000 in the Northern Territory. The *Model Work Health and Safety Bill 2009* appears to have increased maximum fines even more: the maximum fine for a corporation will be $500 000, which can be increased to $1 500 000 if the contravention exposes an individual to a risk of death or serious injury or illness,
and to $3,000,000 in the rare event that the duty holder is reckless. This is a step in the right direction, although these maximum penalties are still not large enough to strike fear in large corporations. The difficulty is that merely increasing the maximum fines does not address the processes of decontextualisation and individualisation that take place when offenders are sentenced, and which were outlined earlier in the paper.

There have been other attempts to reconstruct the criminal law to address the types of ‘systems-based’ offences committed by corporations under the work health and safety statutes. Recognising the well-documented weaknesses of the fine – principally that the cost of fines can be passed on to others; that the fines imposed are not calculated with reference to the means of the defendant; and that fines don’t require offenders directly to improve work health and safety – Australian governments have introduced new corporate sanctions, including:

- adverse publicity court orders: (New South Wales, Victoria, South Australia, the ACT and the Northern Territory)
- a court order that the offender participate in a work health and safety-related project (New South Wales, Victoria, South Australia)
- an order requiring the defendant to take remedial measures (Commonwealth, New South Wales, the ACT and the Northern Territory) or to undertake training (South Australia and the Northern Territory);
- an order adjourning the case with or without conviction and requiring the defendant to give an undertaking not to re-offend within two years and to engage a consultant, develop systematic work health and safety management, and to be monitored by a third party (Victoria and Western Australia).

The model Work Health and Safety Bill 2009 has included versions of each of these non-financial sanctions (see Part 13 Division 2). While these are important developments, there is a danger that the new sanctions will not be used much – certainly this has been the experience with the existing non-financial sanctions to date. Anecdotal evidence from judges and prosecutors in New South Wales suggests that both judges and prosecutors, unused to these new sanctions, wait for the other to initiate discussion of them in proceedings.
A further problem is that some regulators argue that these non-financial sanctions themselves signal that work health and safety offences are not 'really criminal', because they are not traditional criminal sanctions. Against this it can be argued that these reforms are part of the process of adjusting the criminal justice system to corporate offending. Further, some of the sanctions (for example adverse publicity orders) can inflict significant reputational damage to offenders, and other sanctions, particularly those that require offenders to undertake to the court that they will introduce structural changes within their organisation, implement a traditional rationale of the criminal law, namely rehabilitation.

A third concern, and one linked to the second concern, is that both non-financial sanctions and increased financial penalties will only strengthen the criminality of work health and safety offences if imposed after conviction. In some Australian jurisdictions, and in the Model Work Health and Safety Bill, courts can impose penalties without conviction. It is difficult to think of a clearer statement that work health and safety offences are ‘not really criminal’ than regular penalties (financial or non-financial) imposed without convicting the offender of the work health and safety offence than the court had found to be proven. In some Australian jurisdictions, Queensland being the prime example, it is standard practice for fines to be imposed without conviction, apparently with the agreement of the prosecutor.

The manslaughter debate
The reinvigorated work health and safety debate in Australia has, since the mid-1980s, included regular calls for manslaughter prosecutions for work-related deaths (see Hall and Johnstone 2005). Unlike the offences against the general duties in the work health and safety statutes, which are absolute liability (qualified by reasonable practicability) offences, and do not require an injury or death for the offence to be committed, manslaughter prosecutions can only be brought where a fatality has occurred, and where the person causing the death was guilty of criminal fault. In Australia at common law the requisite fault is ‘criminal negligence’: that is, ‘a great falling short of the standard of care’ which a reasonable person would have exercised, involving 'such high risk that death or grievous bodily harm would follow that the doing of the act merited criminal punishment’ (see Nydam v R [1977] VR 430 at 445). Manslaughter prosecutions can only
be investigated by the police and prosecuted by the relevant Director of Public Prosecutions.

There are technical legal reasons why it is difficult to prosecute corporations and corporate officers for manslaughter, and consequently manslaughter prosecutions for workplace deaths are extremely rare. Much of the debate is about changing the legal rules to ensure that manslaughter can be more easily attributed to corporations and corporate officers (see Johnstone 2004a: 464-72). Essentially, there are three issues to the manslaughter debate: should the gross negligence manslaughter elements be clarified or replaced by something else?; should the rules be changed to enable senior corporate officers to be prosecuted?; and should the rules attributing liability to corporations be reformed?

Some have argued that there is little evidence that manslaughter prosecutions will have a deterrent effect, and that manslaughter prosecutions should be used for symbolic purposes (see Haines and Hall 2004). Others have argued that manslaughter prosecutions may be counter-productive, in that by focusing on a few particularly ‘serious cases’ and singling them out for ‘special treatment’, the regulator risks further undermining the criminality of work health and safety offences (see Carson and Johnstone 1990: 140). ‘By prising out a few cases for treatment under separate, criminal auspices, the criminal status of what is left is rendered even more ambiguous than it is already becoming under the impact of the continuing historical and structural processes’ (Carson and Johnstone 1990: 140) outlined earlier in this paper. While industrial manslaughter provisions were debated in 1990s, the only manslaughter provisions introduced in Australia were in the Australian Capital Territory in 2003 (the Crimes (Industrial Manslaughter) Amendment Act 2003 (ACT)).

A more common response to the debate has been for governments to introduce provisions imposing higher maximum penalties for contraventions of the general duty provisions in the work health and safety statutes where an incident resulted in death, serious injury or a serious risk of death or serious injury, and/or where there was an element of mens rea. To give two examples, section 32A of the New South Wales Occupational Health and Safety Act 2000 created an offence where a breach of a general duty provision caused the death of a person to whom a duty is owed and the duty holder was reckless as to danger of death or serious injury. The maximum penalty for this offence was $1,650,000 for a corporation and $165,000 or five years imprisonment for a natural
person. Section 32 of the Victorian *Occupational Health and Safety Act* 2004 created an offence of recklessly placing another person at a workplace in danger of serious harm, with a maximum penalty of $1,020,780 for a corporation and $204,156 or 5 years imprisonment for a natural person.

It could be argued that this is a better approach to reasserting the criminality of work health and safety offences – by having penalties that escalate as the level of risk from the offence increases, and penalties that escalate with the *mens rea* of the offender. In other words, rather than perpetuating the distinction between work health and safety offences as quasi-criminal or regulatory crime and ‘mainstream’ crimes as being ‘real crime’, this approach emphasises the criminality of the work health and safety offences. A problem, of course, is that this approach tends to emphasise criminality when the offences assume characteristics well known to the traditional criminal law – a serious injury or a death, and *mens rea* – rather than reconstructing it. A better approach might be to enact the health and safety offences in the mainstream Criminal Code (see Carson and Johnstone 1990).

**Liability of officers**

A corporation is an artificial entity, and can only operate through its human agents – including its officers and workers. The Australian work health and safety statutes have, since the 1980s, included provisions enabling senior corporate officers to be prosecuted where the corporation in which they are an officer commits a work health and safety offence. Until recently, the models used have been based on derivative liability: that is, the issue of officer liability only arises once a corporation has committed an offence.

One model was ‘accessorial’ liability, the approach taken in section 55 of the *Occupational Safety and Health Act* 1984 (WA), which provides that a director, manager, secretary or other officer of the body corporate is also guilty of an offence committed by the body corporate if the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of the officer. A similar approach is taken in section 37 of the *Health and Safety etc At Work Act* 1974 (UK). Accessorial liability of this type is difficult to prove.

A second approach was the ‘imputed liability’ approach taken in section 26 of the *Occupational Health and Safety Act* 2000 (NSW), section 167 of the *Workplace Health and Safety Act* 1995 (Qld) and section 53 of the *Workplace Health and Safety Act* 1995 (Tas). Here officers were deemed to have committed offences committed by the body
corporate unless the officer satisfied the court that he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.

A third approach (example, section 144 of the *Occupational Health and Safety Act 2004* (Vic) is also built on imputed liability, but couched the director’s duty in terms of ‘reasonable care’. A similar approach is taken in South Australia.

Only Queensland and Northern Territory provide for custodial sentences. The possibility of imprisonment certainly helps assert the criminality of the work health and safety statutes; but low very low prosecution rates ‘conventionalised’ these offences.

A new approach has been taken in the model *Work Health and Safety Bill 2009*. Instead of relying on imputed or accessorial liability, the model Act imposes a positive and proactive duty on ‘an officer’ of ‘a person conducting the business or undertaking’ to ‘exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.’ Due diligence is codified in the model Act. Why this recasting of the duty is so important is that every officer must exercise due diligence, and the officer can be prosecuted if he or she is not exercising due diligence even if the work health and safety performance of the firm is satisfactory. The maximum penalties for a contravention of the officer’s duty are significant: A$100,000 for ordinary contraventions; $300,000 if the failure to exercise due diligence exposes an individual to a risk of death or serious injury or illness; and $600,000 and the possibility of five years imprisonment if the officer is reckless.

**Enforcement Powers for Workers**

Another approach to bolstering enforcement is to strengthen power of workers to resist production pressure and to work safely. The Australian work health and safety statutes have made some headway in arming workers and their representatives with enforcement powers, though the approach has not been consistent.

Before the introduction of the model *Work Health and Safety Bill 2009*, five of the nine work health and safety statutes empowered health and safety representatives (HSRs) to
issue provisional improvement notices; and four gave HSRs power to direct that
dangerous work cease, as part of a broader issue resolution process.

A different approach was followed in New South Wales, which, at least since 1983, has
given authorised union officials the right to investigate suspected offences against the
work health and safety statute, and has enabled trade union secretaries to bring work
health and safety prosecution. About 20 prosecutions have been brought since 1983,
many of which have been groundbreaking. One concerned inadequate staffing during a
strike at a government school for disabled children resulting in an assault on a teacher;
and another three addressed the trauma being suffered by Finance Sector Union
members during armed bank robberies, and led to the introduction of barriers and a
significant decline in both robberies and affected staff.

The model Work Health and Safety Bill 2009 has vested all HSRs with the right to issue
provisional improvement notices, and to direct that dangerous work cease as part of an
issue resolution process. It also contains provisions for trade union officers or employees
with work health and safety entry permits to investigate suspected contraventions of the
model Act or to consult and advise ‘relevant workers’ (that is, workers who are members,
or eligible to be members, of the union and who work at the workplace) on health and
safety issues. If contraventions are found the union entrant has no right to enforce
(including prosecution), and only has the right to warn persons at risk of the health and
safety risk. The New South Wales version of the model Act has, in fact, retained a
restricted right of union prosecution.

These provisions are important because they vest enforcement powers in the workers
who bare the work health and safety risks of work. They also increase the accountability
of regulators and of employers. Only in New South Wales is there a decent hierarchy of
sanctions available to workers and their representatives to aid enforcement. While these
sanctions do not necessarily address the issue of the criminality of work health and safety
offending, they do arm workers with some measures to resist production pressures from
overwhelming health and safety concerns.
Conclusion

This paper has argued that despite much debate in Australia about improving enforcement of the work health and safety statutes, the decriminalisation of health and safety offences has barely been addressed. Part of the difficulty is that the ‘quasi-criminal’ status of work health and safety offences is deeply entrenched in public discourse about health and safety regulation – even progressive commentators tend to argue that health and safety offenders should be criminalised by launching more manslaughter prosecutions (see, for example, Glasbeek 1998, Slapper 2000 and Toombs and Whyte 2007), rather than by reconstructing the criminal law surrounding health and safety offences. The other difficulty is that the discourse surrounding health and safety enforcement, particularly by regulators, is firmly anchored in a consensus regulatory framework, where the emphasis is on ‘promoting and securing compliance’ rather than on deterrence and punishment. Just how strong this approach is amongst regulators is illustrated by the model Work Health and Safety Bill 2009 which frequently uses the term ‘compliance’ for ‘enforcement’. The central concern of regulators is to find an armoury of enforcement tools that ‘work’ to improve compliance – the issue of reasserting the criminality of health and safety offences is off the agenda.
References


Fooks, G., Bergman D., and Rigby, B., (2007) *International comparison of (a) techniques used by state bodies to obtain compliance with health and safety law and accountability for administrative and criminal offences and (b) sentences for criminal offences*, RR607, Health and Safety Executive.


Sigler, J.A. and Murphy, J.E. (1988), Interactive Corporate Compliance, New York: Quorum Books

Sigler, J.A. and Murphy, J.E. (1991), Corporate Law Breaking and Interactive Compliance: Resolving the Regulation-Deregulation Dichotomy, New York: Quorum Books


