ACHIEVING EFFICIENCY AND ACCOUNTABILITY IN OCCUPATIONAL HEALTH AND SAFETY AND WORKPLACE REFORM

by

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Abstract

This paper examines the relationship between workplace reform and occupational health and safety. Since the early 1980s major changes have occurred to both industrial relations and occupational health and safety (OHS) legislation. Legislative changes and policy initiatives have created both problems and opportunities in terms of improving occupational health and safety. The paper identifies reasons for involving workers in occupational health and safety management, including the contribution this can make to workplace reform. At the same time, a number of concerns are raised about the introduction of changes in the workplace may adversely affect occupational health and safety. The paper concludes by looking at the impact of enterprise bargaining on OHS. It argues that while enterprise bargaining offers some opportunities for improving OHS the present institutional mechanisms do not adequately guard against negative outcomes. This, and available evidence, indicates that enterprise bargaining may well lead to a deterioration of OHS standards. This is most likely to occur in cost-competitive, weakly unionised or labour intensive industries - industries in which NESB migrants and women workers are disproportionately concentrated.
Introduction

Between 1972 and 1989 the federal government together with every state and territory in Australia introduced new occupational health and safety (OHS) laws. This legislation entailed major changes to the responsibilities of employers, employees and others. More recently, there has been a sharp focus on the relationship between industrial relations and workplace productivity. The Australian industrial relations system has been reshaped to create a more productive and collaborative culture at work through award restructuring, union amalgamation and enterprise bargaining. These two trends are not incompatible. Industrial relations and OHS are integrally related and this needs to be recognised in terms of management's efforts to create both a more productive and healthier work environment. The participative mechanisms afforded by both OHS laws and the shifting locus of industrial relations to workplace can, as an increasing number of employers are recognising, play a critical role in this. At the same time, taking advantage of this requires real commitment and planning by the parties as well as a regulatory framework which encourages trust (by ensuring genuinely representative negotiations, the maintenance of minimum standards and notions of equity). Otherwise, there is a danger that workplace reforms may undermine OHS performance rather than enhancing it.

New Directions in OHS laws and industrial relations

Until the 1970s responsibility for occupational health and safety, including hazardous substances, was seen to reside with the state or management. There were few avenues by which workers or unions could involve themselves. This approach failed conspicuously.

In the last 15 years especially there has been a growing recognition of the need for more employee involvement in OHS. Two inter-related factors underpin this change in Australia.
1. The passage of new OHS laws at state and territory level between 1972 and 1989 entailed a number of important innovations. First, the laws introduced new broad duty of care provisions on employers, designers, importers and suppliers. These provisions encouraged a more systematic and comprehensive approach to OHS on the part of management. They also require a greater recognition of insidious health risks than was the case with earlier laws. Second, the introduction of tripartite standard setting and policy making bodies at industry, state and territory level has encouraged a more constructive and proactive approach to OHS standards from both management and unions (although these bodies have recently been abolished in Victoria and South Australia). Third, at workplace level the laws provide for joint workplace OHS committees to address OHS problems and for employee OHS representatives to monitor conditions to ensure that workers’ health is being safeguarded. For instance, s73© of the Queensland Workplace Health and Safety Act, 1989 requires that the employer must consult the health and safety representative of any changes to work processes or substances that may affect OHS. In Victoria and South Australia health and safety representatives may order a temporary halt to the work process in situations where they perceive an immediate and significant danger to workers’ health.

Although major responsibility for OHS law presently rests with that states and territories, the federal government has sought to complement and reinforce these changes. In 1984 the federal government established a tripartite National Occupational Health and Safety Commission (NOHSC) with the corporate title of Worksafe Australia to achieve a more co-ordinated national approach to OHS. Further, in 1991 the federal government introduced OHS legislation to cover its own jurisdiction which adopted the central elements just described. One of the most significant developments in recent years was the establishment of a national OHS agency - the National Occupational Health and Safety Commission and its corporate entity Worksafe Australia. While Worksafe lacked strategic direction in its early years the increasing globalization and nationwide focus of the Australian economy has created demands for more uniform regulatory standards and procedures, including those relating to OHS. In the 1990s the need for greater national co-
ordination in OHS standards has been manifested in a push for national uniformity and mutual recognition of qualifications by different states and territories. The push for national uniformity has not proved to be unproblematic. The development of a national set of regulations and codes of practice in relation to hazardous substances has been slowed by obstacles thrown up by some state governments, problems of co-ordinating union responses at state and federal level and a series of other difficulties. One of these is that the shift to codes at the national level may entail a watering down of standards. Such a concern was raised recently in relation to the National Standard and Code of Practice for the Storage and Handling of Dangerous Goods. In relation to mutual recognition problems have arisen where some states do not have formal qualifications for particular occupations which have specified OHS-based training requirements in other states. Two examples are in relation to forklift truck drivers and some categories of crane driver. States without such requirements are pushing a lowest common denominator approach. This could represent a major problem for Queensland which has strongly emphasised specified training and qualifications as a means of ensuring operator competency.

The federal government has recently initiated a national inquiry by the Industry Commission. This may set the scene for more federal intervention in OHS. While such intervention may have real value in the long term this will only be the case if steps are taken to ensure that the shift to a more uniform national system doesn’t entail an overall reduction in OHS standards.

In sum, revised OHS laws provided for greater employer responsibility, a shift away from prescriptive standards (via detailed regulations) to broader and more flexible performance standards (in codes of practice), and the establishment of clear avenues for worker and union participation in both standard-setting and enforcement. The aim of these laws was to encourage what has been variously termed self-regulation or co-regulation. The shift to a more collective approach to OHS, the important role of unions in training and supporting employee OHS representatives, and the use of industrial tribunals to hear some appeals under OHS laws, has helped to breach the rather artificial legal and institutional divide
between OHS and industrial relations. Australia has been by no means unique in following this path. It is worth noting that the importance of a participatory approach to OHS regulation is recognised not only in an increasing number of individual countries but also in Convention 155 of the International Labour Organisation.

2. The period from the mid 1980s witnessed equally major changes to the industrial relations climate and workplace management which have also impacted on OHS. Since the 1980s Australian industry has faced an increasingly competitive environment where improvements in the effectiveness of management, productivity and product or service quality are critical to survival. Adjustments have been made to the industrial relations system to better meet these challenges and address past failings. These adjustments have achieved both through the conscious intervention of policy makers, and also unions and employers. The Accord framework placed an emphasis on wage restraint in return for quality of life improvements such as OHS. Attempts to create more flexible and efficient outcomes proceeded through the second tier, award restructuring and most recently the shift to productivity-based enterprise bargaining. In general, the ACTU and unions have played a significant role in attempts to enhance industry productivity. The result has been a profound shift in the industrial relations climate of Australia from the 1970s. What has been termed the new industrial relations is marked by greater collaboration between management and unions, greater flexibility in matters such as shift penalties etc in return for commitments regarding employment, and a shift to more decentralised productivity-based negotiations (without completely abandoning important public interest/equity considerations).

This collaborative and collectivist model has come under challenge via more radical labour laws (which seek to weaken unions, re-assert managerial prerogative and introduce individual employment contracts) enacted by recently elected coalition state governments.

The remainder of this paper will examine the impact of changes in OHS legislation and industrial relations on employee involvement in OHS in more detail.
The impact of revised OHS legislation and lessons from overseas

There can be no doubt that new OHS laws have had a profound impact on many Australian workplaces. The Australian Workplace Industrial Relations Survey (Callus et al, 1991) found that 71% of workplaces had a written OHS policy and 41% (representing 65% of all employees) had an OHS committee. The latter finding meant that OHS committees were the single most important type of participative arrangement at the workplace. The legislation has also led to the appointment of over 15,000 employee health and safety representatives, whose presence has, in turn, affected management attitudes and workplace practices in relation to OHS (see for example Biggins et al, 1991). The requirement to train and provide logistical support to health and safety representatives, together with their involvement in tripartite standard-setting has obliged Australian unions to develop a greater awareness of and interest in OHS.

The new OHS laws also provided unions with a basis from which to negotiate more comprehensive procedural and substantive arrangements in relation to OHS. From the mid 1980s one important development was the negotiation of health and safety agreements between unions and particular workplaces, enterprises and even industry groups. This process was aided by model guidelines drawn up by the ACTU with agreements commencing in the public sector (such as the Williamstown naval dockyard, Victorian Metropolitan Fire Brigades Board, SECV, Government Aircraft Factory, Telecom and Australia Post) and then spreading to the private sector with agreements covering pulp and paper milling and the finance industry. These agreements basically sought to extend worker and union rights to involvement in OHS and to establish a mechanism for joint resolution of OHS issues.

Initiatives did not rest entirely with the unions. Some companies like BHP Steel have signed quite comprehensive OHS agreements - which deal with prevention, compensation and rehabilitation - with unions.

It can also be argued that the direct and indirect effects of shifts in OHS laws has been to cause an increasing number of employers to introduce more flexible, comprehensive and organisationally sophisticated OHS programmes. Common features of such programmes
include clearly enunciated goals and commitment, an upgrading of resources devoted to OHS and efforts to involve and make use of worker and union input via joint OHS committees and other mechanisms. Less common but potentially important are attempts to make OHS a key organisational performance indicator and including OHS in the remuneration assessment of individual managers. These changes should not be exaggerated. Most employers are, at best, only beginning to change their traditional approach to OHS management. Very few have adopted the most elementary forms of risk assessment let alone introducing purchasing committees or review mechanisms to overview the purchase or introduction of potentially hazardous substances, equipment or work-processes into the workplace.

The impact of more participatory OHS laws on the overall incidence of occupational injury and disease remains unclear. Any assessment is made difficult by the equally significant shift from detailed regulation to performance standards and the well-known problem of changes in OHS reporting during periods of recession. Gun’s (1992) comparative study of the British Robens-model OHS legislation (upon which Australian laws were partly modelled) and USA OHS laws (which do not involve participative mechanisms or performance standards) found a parallel trend in injury rates. Gun does not refer to the participatory dimension but argues his findings do undermine the argument for abandoning detailed regulations in favour of broadly-based performance standards.

Another major complication is that the impact of OHS laws on employee involvement cannot be treated in isolation but must also take account of the participatory mechanisms afforded by unions and industrial relations laws. With regard to this there have been contradictory trends at work in countries like Britain. Although Robens style legislation empowered workers in certain respects, the shift to self-regulation was predicated on a strong union movement facilitating this process. A series of studies (see Walters, 1987; Barrett and James, 1988; Dawson et al, 1988 and Nichols, 1990 all cited in Quinlan, 1993:153) have argued that changes to labour markets and industrial relations laws in the 1980s weakened unions and thereby undermined the effectiveness of British OHS legislation. In short, while OHS laws appeared to grant workers more rights, the basis to implement these rights was undermined by changes in the industrial relations sphere. As US evidence indicates (see studies by Weil, 1991,1992 and Robinson 1991 cited in Quinlan, 1993:154), union presence affects OHS
standards even under non-participatory OHS laws. However, the interdependency is greater in the former. The lesson for Australia is that the present mechanisms for worker involvement in OHS afforded by OHS laws could be undermined by changes to industrial relations laws which weaken unions.

Some Problems with Existing OHS Legislation

While the general thrust of changes OHS legislation represent an improvement over earlier laws a number of problems remain. These include the following:

*Fragmentation and Inconsistency*

Even in the context of national uniformity, the rationalisation of state OHS legislation, and the introduction of similar laws in the Northern Territory (1986) and the ACT (1989), has not removed obstacles to a truly national approach to OHS regulation. Although state, federal and territory Acts are broadly similar significant differences remain. These differences include variations in the nature and scope of duty of care provisions (including the parties made subject to these provisions); variations in the structure and use of tripartite/bipartite standard setting bodies; variations in the reliance placed on occupational certification (with an OHS component); variations in the resourcing, powers and functions of the inspectorate; variations in enforcement mechanisms, procedures and penalties; variations in licensing requirements; variations in the relative use of regulations, codes of practice, guidance notes etc; variations in the relationship of principal OHS legislation to other laws (such as those dealing with workers’ compensation, transport and hazardous substances); variations in the avenues made available for union and arbitral tribunal input; and variations in the powers and functions of both workplace health and safety committees and employee health and safety representatives. The federal government has relied on voluntary collaboration from the states and territories to implement a more uniform system. Despite some important progress this approach has also struck obstacles and remains problematic. For industry, especially those operating on a national or international basis the introduction of single set of OHS standards and procedures would have great benefits in terms of avoiding the costs associated with meeting different standards in relation to materials, plant and equipment and in terms of
developing a consistent OHS management system (and associated savings in training and staff transfer costs).

**Closer links with workers’ compensation**

In many jurisdictions there has been an effort to more closely integrate the preventative function with that of workers’ compensation. This, and the greater emphasis on rehabilitating injured workers, has some clear benefits in terms of reducing long term costs and providing more meaningful jobs for those suffering permanent injury. States like NSW have moved to the point where a risk management/cost control model of workers’ compensation drives the prevention system (ie inspectors have been incorporated into the Workcover Agency). The problem with this approach, as other states like Queensland are aware (see Queensland Division of Workplace Health and Safety, 1994), is that workers’ compensation claims are a poor indicator of workplace injury and disease and therefore constitute an inadequate basis from which to devise a prevention strategy. Overall, these claims represent less than half the known incidence of injury and disease (in some industries claims represent as little as 10% of the actual incidence). Those injuries and diseases which do not find their way into workers’ compensation claims are not simply minor cases (even fatalities can be omitted). In particular, the level of occupational disease (and stress) is significantly understated in workers’ compensation claims and it is also known that employers can fairly readily ‘massage’ their claims record. In short, workers’ compensation claims represent a very partial (and often historically anachronistic) base for planning prevention strategies.

**Employee Participation**

In some states and territories the OHS legislation fails to ensure that employee health and safety representatives have the training, powers and functions that would enable to carry out their activities effectively and to make employee involvement meaningful. Both overseas and Australian evidence indicates that where health and safety representatives have been given significant powers, notably the authority to issue a provisional prohibition or improvement notice where there is an imminent and serious danger to workers’ health, these powers have not been abused. On the other side, changes to the industrial relations climate in states like
Western Australia appear to have been associated with an increasing number of instances of discrimination against health and safety representatives (see Warren-Langford et al, 1993:604). The large number of such cases is a worrying trend given the key role played by health and safety representatives in safeguard employee interests. In states like Queensland no legislative protection has been afforded to ensure that representatives may carry out their functions without risk of intimidation or dismissal.

It also needs to be recognised that unions play a critical role in terms of facilitating effective employee involvement. Unions provide the training for these reps (via state ACTU OHS training units), support material and industrial backup (including protection from unfair dismissal). Studies in both Britain (e.g., Leopold and Beaumont, 1983; Dawson et al 1988; James 1992) and Australia (see a series of studies undertaken by Biggins et al) have demonstrated that the effectiveness of health and safety representatives is contingent upon union support (and the granting of meaningful powers under the legislation). Leopold and Beaumont found that participatory structures for OHS were only effective in highly unionised workplaces and available evidence indicates a similar situation in Australia.

**Marginal Workers, Small Business and Subcontracting**

Traditionally, the structure and administration of OHS legislation was primarily directed at workers in medium to large workplaces with a high reported incidence of compensable injury. This preoccupation has only been slightly modified despite the dramatic extension of coverage under the revised OHS legislation and an increasing recognition of the hazards found in areas dominated by small business or self-employment (such as farming and agriculture, fishing etc). Moreover, in the last 20 years and more especially during the 1980s there has been a dramatic growth of subcontracting and agency labour as well as casual and part-time employees. Subcontracting has long been associated with OHS problems such as the failure to use scaffolding, proper trenching or safety-harnesses in the building industry, breaches of safety practices in mining and excessive hours and drug use in road transport. Similar problems are now emerging amongst contract trolley collectors in retailing, home-based clerical or tele-workers and home-based childcare providers. In a similar vein, casual and part-time employees and those working in small businesses are often subject to less effective regulation of their employment conditions and OHS.
In recent years in several states, such as Queensland, governments have started to pay attention to small business in terms of OHS. In Queensland this activity has already revealed that in many industries OHS risks are at least as high in small business as in larger firms (and possibly worse given the greater likelihood of under-reporting in small business). It has also been learned that small business requires OHS information specifically formulated for it and different delivery (notably more reliance on personal contact by OHS inspectors/advisers [ideally based locally] and less reliance on documentation) and enforcement practices. Nevertheless, regulatory agencies have done little more than scratch the surface of this vast area of employment and the OHS problems found there.

Further, state and federal governments are yet to recognise let alone address the OHS implications of the growth of subcontracting and casual employment. For example, although the Queensland Workplace Health and Safety Act makes it clear that the principal contractor retains an overriding responsibility for OHS it is not clear that, in the absence of prosecutions, this has been all that effective. Further, some employers (even government authorities) have sought to evade this provision by designating a subcontractor as the principal contractor.

Compliance Strategies and Enforcement

Codes of Practice versus Regulations

One of the key changes associated with the new legislation has been an attempt to convert most OHS standards from the highly prescriptive form found in regulations to more general and performance based codes of practice. For example, under the old-style regulations there were specific load lifting limits for women and younger workers. Under codes of practice the OHS problems associated with lifting, pushing or pulling objects have been dealt with under the broader notion of manual handling. The code of practice on manual handling identifies various risk situations and then suggests ways that these can be avoided. Codes of practice are not as prescriptive as regulations in the sense they do not specify one-safe way, method or standard as is the case with regulation. Codes of practice are more flexible and can address the complex and changing nature of the workplace better than regulations. With regard to hazards which are clearly known and for which there is one OHS standard, such as exposure to noise, it is suggested that the specificity and clarity of regulations is appropriate.
However, where, as in manual handling, specification standards are of restricted value then
codes of practice should be introduced. In the case of hazardous substances the situation is
less clear and this has led to elongated debate in terms of the national uniformity push.

Under most principal OHS Acts failure to comply with a regulation represents an offence
which, as the regulation is subsidiary legislation, doesn’t carry the same penalty as a breach
of the duty of care provisions under the Act (although the breach of regulations may also
indicate a breach of these provisions has occurred). Failure to comply with a code of practice
is not an offence in its own right. However, laws such as the Queensland Workplace Health
and Safety Act provide that unless the employer can demonstrate that the method they
adopted achieved a standard at least as high as that specified in the code of practice then
this shall be taken as prima facie evidence of a breach of one the primary duty provisions of
the Act. Thus, failure to comply with a code could form the basis for a prosecution under the
duty of care provisions of the Act, carrying with it a much higher maximum penalty than would
apply for a breach of regulations.

It is clear that codes of practice could play a significant role in OHS enforcement. There are,
however, two problems. First, there has been a widespread shift to codes of practice and to
replacing regulations without a careful consideration of whether regulations on amenities etc
should be retained. In some circumstances unions have felt the shift would entail either a loss
of standards or at least a more ambiguous situation. Further, there has been no real effort to
assess whether the potential enforcement value of codes of practice is being realised in those
areas where they have already been introduced. A more careful and considered transfer is
needed if we are to avoid creating new problems in the future. A second and related problem
is that as yet, there have been few major prosecutions to demonstrate both the value of
codes of practice and the commitment of governments to vigorously enforce these standards.
The last point flows on to a more general criticism of the new legislation.

To enforce or not to enforce?

The new style legislation was introduced within the context of an argument that earlier
punitive legislation had failed and that a shift to self-regulation was needed. The reality was
more complex. In most jurisdictions no serious effort had been made to enforce the so-called punitive legislation. Further, self-regulation has proved a dubious commodity in the 1980s, especially in the context where unions and health and safety representative were not empowered to take a direct role in enforcement. There has been considerable criticism that self-regulation often amounts to nothing short of de-regulation. Agencies such as the Queensland Division of Workplace Health and Safety have claimed that what is being instituted in Queensland amounts to co-regulation since the government has not abandoned the field of standard-setting and enforcement. Certainly, governments have become more proactive in the area of OHS providing a series of positive measures and incentives for employers to improve OHS. Such measures are valuable but they are not a substitute for vigorous prosecution of those who breach of OHS standards.

Not all employers will respond to positive measures. Some will only respond to the threat or actual prosecution and others will be influenced by what they perceive as the risk of prosecution. Unless failure to comply with duty of care is seen to pose a real risk of prosecution as evidenced by actual prosecutions then the new legislation will lose much of any initial impact its passage has had. What is needed is an array of compliance measures, some positive and some negative, and a graduated basis for implementing them (eg advice followed by the issuing of a notice if the advice is not taken followed by prosecution if the notice is not adhered to). In practice this has not occurred. For example, up until very recently there was no follow up of the auditing process undertaken by the Division of Workplace Health and Safety to see to what extent issues raised in the audit had been addressed.

In most states, the introduction of revised OHS legislation was not associated with any significant increase in prosecutorial activity. Prosecutions remain rare and mainly confined to small employers in particular sectors like building and construction. What prosecutions are undertaken are not even publicised although it is well known that adverse publicity is a powerful weapon especially in relation to larger employers keen to protect their public image. I know of no major successful prosecutions under the duty of care provisions. Nor has the option of prosecuting individual managers - something found to be successful elsewhere - been utilised. In Victoria a small number of companies/individuals have been charged with
manslaughter and one conviction (Denbo) has been recorded. These cases, including ones threatened but not proceeded with such as in the case of Civil and Civic, have apparently led not only to significant changes within the companies concerned but also widespread publicity within employer journals etc. In short, they represent an important mechanism for demonstrating the need for employers to treat duty of care seriously.

The Problematic Interaction between OHS Legislation and Anti-Discrimination/EEO Legislation

Another problem area is the relationship between OHS legislation and EEO/Anti-Discrimination legislation. There are clear and not so clear overlaps between OHS legislation and new laws dealing with discrimination and equal employment opportunity. For example, sexual harassment represents not only an invasion of personal privacy and an exercise of power, it is extremely stressful and often entails adverse effects on the health and well-being of women. As such sexual harassment is an OHS issue. Likewise, the lack of quality workplace-based institutional childcare also can have adverse health effects for women workers. As Bennett (1991) noted, the federal government’s promotion of home-based childcare by subcontractors amounted to a cheap policy solution with adverse implications not only for mothers and children but also the health and well-being of care-providers themselves. Such a policy, by not promoting more easily unionised and regulated (in terms of professional training etc) institutional based childcare, also materially effects industrial relations in the industry. Unfortunately the interlinkages between these laws and industrial relations more generally has only been partly recognised and there has been little effort to ensure that the combined effect of these laws is consistent or that broader policy objectives are achieved. In part, this reflects the fact that the laws have been promoted by different lobby groups with little concern for each other.

For example, state and federal OHS legislation has removed discriminatory standards imposed under pre-Robens laws such as load lifting limits based on gender and age as well as gender based job-exclusion in relation to particular hazardous substances such as lead.
Note, however, in 1993 MIM successfully challenged in the Federal Court a safety code and standards for the lead industry drafted by the National Occupational Safety and Health Commission in consultation with the Sex Discrimination Commissioner. The Full Court decided that the NOSHC had exceeded its authority by its overriding concern for the sex discrimination implications of any code (*Human Rights and Equal Opportunity Commission v Mount Isa Mines* (1993) 118 ALR 80). The court argued that the appropriate approach for the NOSHC should be to draft the code on OHS grounds and to warn employers these might contravene the Sex Discrimination Act unless they made application for exemption under s44.

Revised OHS laws also make some reference to the need to take account of the special difficulties or interests of women, NESB migrants and other disadvantaged groups (generally in terms of representation on OHS policy or standard setting bodies and in the standard setting process). However, discrimination by employers is a logical response to this legislation as it presently stands. For example, to minimise their liability under duty of care it is entirely logical for employers to seek to avoid workers who they regard as high risk (such as those previously exposed to hazardous substances) or those more easily injured (such as older workers or the physically impaired). At present there virtually no legislative controls on the use of pre-employment medical screening to ensure that this is not applied in an arbitrary and discriminatory fashion (see Johnstone, 1993). Equally, widespread drug testing of employees or health promotion programmes may not only be discriminatory but may also be used as a substitute for any real attempt to address OHS problems in the workplace. Even government agencies have become a party to discriminatory practices in breach of EEO objectives. For example up to the early 1990s the Victorian Accident Compensation Commission was securing a suspension of compensation payments before the Workcare Appeals tribunal when injured female workers fell pregnant - a situation in clear breach of the government’s EEO guidelines (and only resolved when one of the tribunal judges referred a case to the EEO Authority).

While workers may take a complaint that they have been unfairly discriminated against this option to ordinary workers who lack the knowledge, skills, time and resources to use such
individualised appeal mechanisms. A far better solution would be the use of collective negotiation to address these issues and the preparation of a code of practice on medical testing etc by OHS authorities in collaboration with unions and EEO agencies.

Workplace Reform and OHS

By the end of the 1980s it was increasingly recognised that more effective OHS laws are a critical but partial solution to the problem of improving OHS at the workplace. As the policy focus in Australia turned increasingly to microeconomic reform and workplace productivity so too has more attention been given to how OHS can be integrated with workplace reform. In recent years attention in OHS has shifted from simply developing technical standards to an examination of job design, work organisation, management systems and employee behaviour - all factors critical to the issue of workplace reform. This knowledge together with the participatory mechanisms provided by both OHS and industrial relations mechanisms could be seen to play a pivotal part in the process of workplace reform. Quite apart from the benefits to workers themselves, the involvement of workers in decision-making over OHS has four general benefits to management.

First, as those most intimately associated with the work process employees have a store of otherwise untapped knowledge valuable in identifying and addressing hazards. They can inform management of hitherto unknown risks and also provide insights into health effects which are not apparent at work such as interruptions to sleep and anti-social behaviour. Psychologists have found that subjective reporting of symptoms amongst shiftworkers is a good predictor of later physiological problems (Frese and Semmer, 1986).

Second, their knowledge also allows them to suggest solutions - and often innovative and cost-effective solutions to OHS problems. For example, in the Ipswich railway workshops workers devised and built a number of trolleys for shifting heavy maintenance equipment and also simply-erected steel trestles to support rail carriages while maintenance was being carried out. These innovations effectively addressed a number of manual-handling problems and have now been adopted at other railway workshops throughout Queensland.

Third, the involvement of workers will strengthen a OHS programme because they more clearly become stakeholders in the venture. Their involvement will facilitate more effective
dissemination of OHS information and will encourage a better understanding of risk exposures and need for protective devices, workplace equipment, changed work practices etc on the part of employees. On the other hand, employee exclusion, the failure to provide information, or simply treating workers as the recipients of OHS advice generated by management, is likely to result in cynicism and distrust which can undermine an OHS programme. Failure to provide full and meaningful OHS information to workers can prove costly in terms of an eventual blow-out in workers compensation or common law damages claims, soured industrial relations and adverse publicity. This is well illustrated by incidents such as the prolonged disputes over cancer risks to coke oven workers at the Port Kembla steelworks in the late 1970s/early 1980s and the bitter dispute over the use of DCB at Hoechst Australia’s Altona plant in Melbourne (Berger, 1993). Even where there is no industrial dispute, as in the case of the 1986 explosion at the Simsmetal factory at Laverton North in Melbourne, the adverse publicity arising both from the incident and later court proceedings can be very damaging.

Fourth, feedback from workers can provide critical evidence as to how effectively an OHS strategy or programme is operating and where it might be improved. The diffusion of knowledge on OHS and the impact of training measures can only really be assessed via such mechanisms. Quantitative measures of OHS performance such as lost time injury incidence are at best partial measures that are open to manipulation via changes to practices which effect reporting (such as changing shift or leave arrangements, bringing injured workers on-site etc). Formal and informal feedback from workers can provide an important qualitative check on how OHS programmes are working in practice.

In addition to these general benefits, OHS has recently been recognised as a potentially pivotal component of workplace reform. The key role of OHS in workplace reform, and mechanisms designed to achieve this such as benchmarking (Knight, 1992), total quality management (TQM) (Fisher, 1991), and best practice has been increasingly asserted in management and government literature. In particular, it has been argued that improved OHS performance is an integral part of increasing both quality and productivity at the workplace (Oxenburgh, 1993:40-2). Direct links have been made between production errors (such as breakdowns and defect rates) and OHS problems - both indicate disorganisation. OHS
problems also represent a barrier to productivity via their costs and interruptions to production or service delivery. There are less tangible effects such as the impact of management’s seeming indifference as to OHS on employee attitudes and morale.

OHS performance has even advocated as a productivity indicator, with, for example, the inclusion of training in safe operating procedures as a formal goal in work re-organisation processes (Australian Enterprise Bargaining Manual, 1993:26-700). The conventional approach to measuring productivity has been to focus in a narrow set of output or budget indicators. Criticising this approach, Green (1992) has advocated the use of a balanced scorecard approach which includes indicators of customer satisfaction (time to market, quality/defects, complaints etc), internal business processes (cycle time, value added, energy efficiency etc), innovation and learning (percentage of sales from new products, additional customer services, improved operating efficiencies etc), financial results (cash flow, sales growth, operating income, market share, return on equity etc) and workforce role (indicators of employee/union co-operation and involvement, training, work organisation, equity, OHS, joint goal-setting, morale and commitment). Rather than focusing on a narrow set of historical outcomes, the modified balanced scorecard advocated by Green represents a more dynamic approach to organisational performance which utilises both qualitative and quantitative measures and which seeks to relate processes to outcomes. It also more suited to not-for-profit organisations and those providing a string of services. Looking more specifically at OHS, Green (no date) notes that OHS can be measured both in terms of positive and negative indicators. However, he argues that if the latter are used (such as accident rates, compensation claims or lost time injury frequency rates) - something most common amongst organisations that do measure OHS - without reference to a mechanism for improvement then such measures will simply replicate the problems of conventional cost-driven approach to productivity measurement. Measures of OHS performance must be linked to a realistic and properly resourced program for preventing occupational injuries and disease. While OHS performance fits most readily under the worker contribution category it also can be an aspect of internal processes and innovation and learning when organisations assess the OHS dimension of work redesign, training programs and the introduction of new technology. Process measures such as risk management or hazard reduction programs and collaborative
structures (such as workplace OHS committees, specific task teams etc) are critical. The value of empowering work teams to develop their own key performance indicators (via benchmarking) within the context of those set by the organisation should also be recognised.

Studies have also indicated that a focus on OHS - something of immediate concern to most employees - enables workers and their unions to more readily relate to and participate in TQM or best practice programmes (Spinks, 1993). This has been linked to more general arguments about the critical need for employee involvement in addressing OHS via joint OHS committees and other participatory mechanisms (Roten and Rowe, 1992).

The growing interest in workplace reform has spread to government agencies responsible for OHS. In the 1990s Worksafe Australia has increasingly shifted its focus from technical standards development towards the achievement of national uniformity in OHS standards and also towards encouraging behavioural change at work by attempting to demonstrate that better OHS practice is central to microeconomic reform and enhanced productivity. One means of doing this has been to commission a series of studies which indicate that far from imposing a cost additional burden, superior OHS performance is strongly associated with high productivity in the coal mining and stevedoring industries (see Ore, 1993). Worksafe is also active in sponsoring research on improved management practices in relation to OHS. Perhaps most importantly, Worksafe has sought to publicise OHS exemplars as a model for other firms through its ‘Best Practice’ programme and awards. Such concrete examples of how to improve OHS are seen as providing other firms with a more readily digestible guide as to how they might improve their own OHS and overall performance. A number of state government OHS agencies also sponsor ‘Best Practice’ programmes.

The synergies between schemes such as TQM and improved OHS are by no means automatic but require planning and appropriate implementation structures. Improvements in OHS can set the basis of employee trust and commitment essential for TQM. Further, at least some TQM literature sees worker involvement as a critical component to the success of such a scheme. Again, OHS can constitute a powerful basis for that involvement. Indeed, some firms have stumbled on the connection between OHS and workplace reform accidentally. An example of this is the case of a large Australian multinational leasing transport equipment. The company initially sought to improve OHS in its maintenance depots. After gaining co-
operation from the union and assuring workers of their jobs it brought a safety engineer on site to discuss changes in the work process with workers and to devise solutions on the basis of their suggestions. The result of this ongoing process were major changes to the work process which not only cut workplace injuries, but also led to more interesting and skilled tasks (as far as employees were concerned), substantial - and unpredicted - boosts to productivity and the development of state-of-the-art tool technology which is now being exported.

Attempting to generalise from such cases and those emerging from best practice schemes is difficult. However, a number of key features emerge again and again. First, these organisations are characterised by a strong commitment to OHS on the part of central management. Second, these organisations are marked by stable industrial relations with a good working relationship with unions. Third, they adopt a participative approach which not only enables workers and unions to be involved in deciding critical issues but also encourages the former to make innovative suggestions (and treats these seriously). Fourth, these firms appear to share a long term commitment on the part of management to building a productive and equitable culture at the workplace.

In recent years enterprise bargaining has been touted as a significant mechanism for workplace reform. Enterprise bargaining could be seen as another mechanism for employee involvement in OHS. The remainder of this paper will evaluate the likely implications of a shift to enterprise bargaining for OHS.

**Enterprise Bargaining and OHS - potential versus dangers**

To some extent, the shift to a more decentralised and collaborative style of industrial relations in Australia has afforded opportunities for negotiating improvements in OHS. However, it would be quite incorrect to unproblematically associate enterprise bargaining with improvements in OHS. As historical evidence from the USA demonstrates (Quinlan,1993), enterprise bargaining per se may not deliver greater sensitivity to OHS or better outcomes with regard to OHS issues. Indeed, for some groups of workers enterprise bargaining may actually have adverse effects on OHS. The implications of enterprise bargaining for OHS depend very much on legal and institutional arrangements, the organisational strength and
commitment of unions, and on the attitude of employers. In situations where the law has abolished awards or permits enterprise agreements without union involvement; where workers are weakly organised and unions lack the strength to bargain effectively; or where employers adopt a short term labour cost-cutting rather than long term productivity improvement approach to enterprise bargaining then the outcomes are likely to be adverse. The OHS of even well-organised and strategically located workers may be put at risk through, for instance, the introduction of performance-based payment systems which encourage risk tasking on the job. Nevertheless, those most likely to suffer as a result of enterprise bargaining are the industrially weak.

Many workers in small to medium sized businesses; seasonal, part-time or casual employees; many migrant workers and the majority female employees fall into the category of workers who are either not unionised or belong to unions lacking the logistical and tactical strength to bargain effectively. As is being increasingly recognised (see Bennett, 1993) the likely outcome of bargaining in such situations is a diminution of working conditions, including OHS. Further, a short-term cost-cutting approach to enterprise bargaining on the part of management, while appearing to deliver immediate benefits, may result in additional long terms costs to both the business and community if it exacerbates the incidence of occupational illness and workers’ compensation claims. For instance, poorly conceived staff cuts may not only affect worker morale and product/service quality but also create additional physiological and psychological stress on workers. Similar effects could be associated with ill-considered changes to work organisation, incentive payment schemes or shift arrangements.

For instance, the extension of standard working hours in recent federal agreements covering the retail trades from 6am to 12pm will affect not only earnings via the abolition of penalties but also employee work practices and employer usage of labour - both of which are likely to affect OHS. Outsourcing, homework or the use of subcontractors - another popular measure for reducing costs - also often has well-documented effects on both product/service quality and OHS (see, for example, Quinlan and Bohle, 1991; James et al, 1992a & b; and Polk, Haines & Perrone, 1993).

The risk to workers’ health has been minimised to some extent where enterprise bargaining occurs as an adjunct or complement to existing awards. This is a long term feature of the coal
mining industry and a recent ACIRRT survey of enterprise bargaining at the federal level and in New South Wales found that 75% of agreements were complementary to rather than replacing awards (Australian 3 November 1993 p5). On the other hand, the risk to OHS is magnified in states like Victoria and Tasmania where awards have been removed and replaced by a more limited and basic set of minimum standards. Award retention is significant because these provide for a wider array of industry specific (and therefore generally higher) minimum conditions to those found in minimum standards legislation. Further, award standards are more readily enforced. Even where awards have not been abolished, as in New South Wales, changes to industrial law which have undermined the capacity of unions to police awards, agreements or statutory minimum conditions may have a significant adverse effects. In NSW unions must give seven days notice of an inspection. The implications of this in the cut-throat clothing trades was revealed after union complaints led to a raid by government inspectors on workplaces and outworkers in Sydney’s south western suburbs. Inspectors uncovered more that 140 violations of industrial and OHS laws including unguarded machinery, blocked fire exits (echoes of the Triangle Shirt Waist fire in the USA) and prices of as little as 85 cents per garment paid to outworkers - rates which were both exploitative and dangerous given the workload they entailed (Sydney Morning Herald 9 March 1994). Enterprise bargaining and revised industrial laws have not created these problems but they certainly have exacerbated them.

Union involvement is important not only in terms of giving workers bargaining strength and some forms of protection, but also in influencing the approach adopted by employers. The ACIRRT survey found that where unions were involved employers were more likely to adopt a productivity enhancement (through training, work re-organisation etc) rather than a cost-cutting approach to enterprise bargaining. Non union agreements amongst small employers in NSW were narrow, being largely directed at achieving cost-savings in terms of hours and penalty rates (Australian 3 November 1993 p5). Changes to hours and other working arrangements may have profound implications for OHS especially in the long term.

A key question to be asked is to what extent is OHS being given explicit recognition in enterprise bargaining? The evidence here is mixed. Examination of the first 1000 federally registered agreements by the Department of Industrial Relations (DIR submission cited in
Draft Industry Commission Report, 1993:61) found that 40% referred to OHS - a higher rate for including OHS provisions than is found in federal awards. The ACIRRT survey of 353 state and federal agreements found that 92% made reference to OHS (cited in Worksafe, 1993). As a recent Worksafe report (1993:2) observed, these provisions indicated that the parties increasingly recognised a potential link between OHS and productivity or organisational performance. However, this recognition was often so generalised as to be of little real value. The DIR report found only 35% of agreements linked OHS into organisational programmes for continuous improvement (cited in Worksafe, 1993:2). The DIR survey found that only 22% of agreements made reference to a specific programme or activity by which objectives were to be secured, only 29% included OHS as a performance indicator and only 12% included an OHS training objective. The response rate to the same issues in the ACIRRT survey was 21%, 33% and 9% respectively (Worksafe, 1993:3).

A New South Wales study (1993) of enterprise agreements at mainly smaller workplaces (such as real estate agencies, child-care centres, retail outlets etc) designed to elicit the impact of enterprise bargaining for women revealed a less optimistic picture. The survey found that women were involved in comparatively few agreements containing wage increases. Further, few agreements dealt with OHS and “the most common provision of those that did was simplification/reduction of provision of protective clothing” (p49).

Significantly, even the ACIRRT survey found that only 14% of agreements included a commitment to employee participation in OHS decision-making. This finding was reinforced by Worksafe’s own research which found that the bargaining agenda was predominantly management-driven with line managers and workplace delegates lacking the information and involvement especially where there were language and literacy problems at the workplace. Worksafe found that OHS systems were continuing to operate largely independent of the bargaining process (Worksafe, 1993:3-4).

One conclusion to be drawn from the above findings is that while OHS may have received more explicit recognition in enterprise agreements (or at least those covering larger male-dominated workplaces) than was the case with awards the shift has been more apparent than real. The overwhelming majority of these provisions are similar to the restricted clauses found in most of those awards which refer to OHS (see Quinlan and Bohle, 1991:336-59). Some of
these provisions are important, such as the increasingly common clause specifically precluding health and safety concerns from the work must continue rule in grievance procedures.\textsuperscript{5} However, these provisions do not indicate a fundamental shift in either the amount or depth of bargaining over OHS.

Another conclusion to be drawn is that OHS has been caught up in a generally unsophisticated approach to productivity measurement and bargaining. This is unfortunate given Green’s (1992) powerfully argued case for a balanced scorecard and process orientated approach to productivity measurement - an approach where employee involvement is central and where OHS could provide a strong indicator of organisational performance. Enterprise bargaining without an effective measure of productivity is an exercise in futility. Further, simply linking a cut in accident rates to pay increases, as several organisations have done, may run the risk that some injuries will simply not be reported (\textit{Inside Enterprise Bargaining}, No.9 April 1993 p2).

There are important exceptions where OHS has been effectively addressed in the enterprise bargaining process. For example, a number of firms in the mining and oil exploration industry have negotiated, with the help of consultants, shift arrangements which minimise adverse OHS effects. Opportunities to integrate OHS improvements with enterprise bargaining have also been demonstrated in relation to the re-design of work processes, in the use of equipment such visual display units, in the agreed use of health screening, in procedures for dealing with pregnancy, in workplace child-care centres, rehabilitation and training practices, and in better methods for dealing with hazardous substances (\textit{Australian Enterprise Bargaining Manual}, 1993:26-550-950;74-915-920). With regard to the latter, an agreement at one enterprise resulted in a joint working party which investigated the use of hazardous substances and was able to come up with a series of solutions which reduced both the number of hazardous substances used at the workplace and also exposure levels to substances still being used.\textsuperscript{6} Such valuable and instructive examples will hopefully become more common.

Many unions are as yet unclear as to how to introduce OHS into the bargaining agenda. The ACTU (1993) has sought to help rectify this by producing a series of model clauses and associated notes on the links between OHS and productivity and how to address OHS in
workplace agreements. These guidelines recognise that the relationship of OHS to enterprise bargaining cannot be restricted to specific, even comprehensive OHS provisions. It has to be understood that even where awards are retained any negotiation over work organisation, staffing levels, output levels or other conditions can have significant OHS implications. One way of seeking to ensure that such implications are taken into account by the parties would be a requirement in state and federal industrial relations laws that the parties demonstrate this as a requirement for ratification for the agreement. This approach would also have the dual advantage of protecting weaker groups of workers and of requiring these tribunals to enhance their understanding of OHS. The ACTU, however, appears to oppose increasing the role of the federal Industrial Relations Commission in enterprise bargaining so such a solution seems unlikely.

At a tripartite Worksafe Australia workshop on enterprise bargaining and OHS there was agreement between employer and union representatives that enterprise bargaining over OHS should not interfere with the standards and procedures laid down existing federal, state and territory OHS laws. Rather, enterprise bargaining should seek to extend and enhance OHS standards at the workplace. To ensure this detailed federal agreements would need to contain a savings clause to ensure that they did not override relevant federal, state or territory OHS laws. There also appeared to be a general acknowledgment that the industrial weakness of certain groups of workers, such as those referred to above, meant that enterprise bargaining over OHS was not appropriate. Such a recognition has implications at least some of the parties may have not realised. Given what has already been said about the impossibility of quarantining OHS off from enterprise bargaining the only way to safeguard such workers would either to give industrial relations tribunals a significant role or to recognise that some groups of workers are better off without enterprise bargaining altogether - a view winning increasing strength amongst those concerned as to the effects of enterprise bargaining on gender inequality and other equity issues at the workplace.

This, of course, cuts across the policy prescriptions of federal and state governments, many employer organisations and a dominant element within the ACTU. Nevertheless, despite the appeal of universalistic policy palliatives a more reasoned position would appear to be that for strongly organised workers dealing with employers committed to long term productivity
improvement, enterprise bargaining may not threaten OHS and may even become an important vehicle for improvements. However, for the unorganised or weakly organised, especially those in competitive and labour intensive industries, enterprise bargaining is more likely to undermine than enhance their health and well-being.

Finally, it should also be noted that, however often it is asserted, enterprise bargaining is not essential to workplace reform. Numerous examples, including some cited above, attest that workplace reform can be achieved without recourse to enterprise bargaining. What is critical is that the combination of OHS and Industrial Relations laws provide a framework where as many workers as possible have a meaningful opportunity to effect their working conditions. The radical labour law reforms proposed or introduced by conservative political parties in Australia which seek to weaken unions, abolish award safety-nets and enshrine an individualised and contractualist employment regime would undermine, as similar laws have done in Britain, New Zealand and the USA, the capacity of workers to safeguard their existing working conditions, let alone seek improvements in OHS (see Quinlan, 1993). Equally, the hostility of conservative parties to the tripartite and co-determination elements of OHS legislation (see Charles, 1992) or claims that OHS laws represent a barrier to productivity bargaining at the workplace (see Sloan, 1992) pose a direct threat to some of the more promising developments discussed in this paper.

Conclusion

This paper has sought to show that employee involvement in decision-making over OHS is not simply critical to the effective management of OHS but is also an integral part of enhancing productivity and quality at the workplace. Indeed, a participatory approach to improving OHS may act as a catalyst for initiating workplace reforms. These changes may occur both as a result of formal and informal processes. Recent changes to OHS legislation and the industrial relations climate in Australia provide opportunities for employees and employers to formally negotiate workplace reforms that simultaneously enhance productivity and OHS. However, achieving this requires commitment to both objectives and a sophisticated long term approach on the part of both management and workers and unions. Some firms have used second tier negotiations, award restructuring and enterprise
bargaining to improve both organisational performance and working conditions but in other instances these negotiations became short-term cost-cutting exercises. The latter approach is likely to yield limited productivity gains and may well have adverse effects on OHS as a result of unthought-through alterations to shift systems, the use of subcontractors or other practices.

The present legislative and policy climate does not ensure a successful outcome. State and federal OHS agencies are endeavouring to promote the integration of OHS in workplace change via best-practice schemes and other devices. Although enterprise bargaining affords an opportunity to negotiate improvements in OHS at present there is limited evidence that these opportunities are being utilised. Further, many groups of workers are too weakly organised to have a realistic chance of negotiating superior standards. Indeed, there are grave risks that their involvement in enterprise bargaining could have adverse OHS implications especially as there are no checks on the system at present to ensure even that existing OHS standards are being maintained. A shift to a more radical and contractualist labour law regime being undertaken in some states and proposed by conservative parties elsewhere would effectively reduce employee input into OHS and increase the likelihood of adverse OHS effects through lower minimum standards and reduced union bargaining rights. It may also, ironically, slow workplace reform by heightening tensions and conflict and undermining the mutual trust that is essential.⁹
References


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Endnotes

1. For a detailed discussion of the present situation in relation to the co-ordination of OHS legislation in Australia see Lee and Quinlan (1994).

2. Unions have joined this push. In 1993 for example an article by Collins the ACTU magazine Workplace was devoted to the issue, arguing amongst other things that cleaner and less environmentally costly production was a likely benefit of more attention to OHS.


4. Even these immediate gains may be illusory. Enterprise bargaining has often been associated with reductions in staffing levels. In a recent study Casio (1994) found the popularity of ‘downsizing’ as a method of enhancing productivity and profitability was often misplaced. In more than two thirds of the firms he surveyed Casio found that downsizing resulted in no improvement in profitability. In 20% of cases there was a negative effect on profitability.

5. Originally found in maritime awards in the 1950s this savings clause became increasingly common in awards and has now been passed to enterprise agreements. See for instance, The South Australian Public Sector, Enterprise Bargaining Framework (State) Agreement, October 1993, attachment H.

6. I am indebted to Mark Collins of Worksafe Australia for drawing my attention to this case. While the need to take OHS into account when purchasing new substances, equipment or work processes would seem obvious a recent survey by Booth (1993) indicated the need for more action in this area.

7. Even active and well-organised unions in industries such as construction are becoming increasingly aware of this threat see, for instance, McDonald (1991).

8. The pledge of the federal Coalition to abolish Worksafe Australia (see Charles,1992) should it win office is particularly ironic given the key role this body is playing in establishing national uniformity in OHS standards. National uniformity is seen by many, including influential employer groups, as a significant step towards improving microeconomic efficiency.

9. A study undertaken by Alexander et al (1994) found that the processes for achieving workplace reform were as important as identifying outcomes. Active unionism, by forcing management to be consultative and effective, contributed to rather than inhibited the change process.