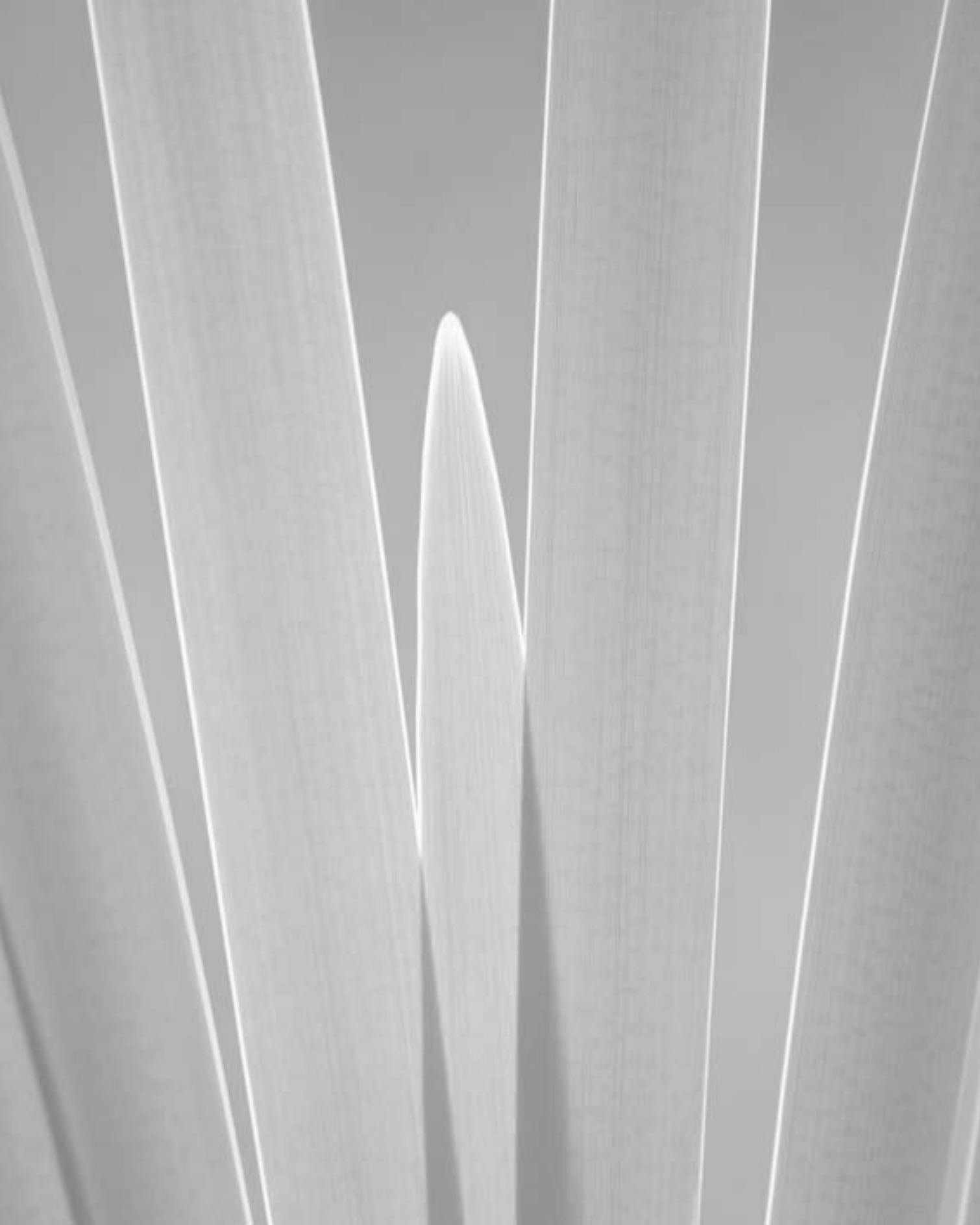


OCCUPATIONAL HEALTH AND SAFETY

objectives

After reading this chapter, you should be able to:

- 1 Understand the context for occupational health and safety (OHS) in Australia.
- 2 Understand the major features of the legislative context for OHS.
- 3 Identify OHS implications of an ageing workforce.
- 4 Identify the basic features of an OHS management system.
- 5 Understand the concept of a 'safety culture'.
- 6 Discuss the relationship of human resource management (HRM) and OHS.



The human cost of occupational health and safety

David Owen was a fencer by trade but took on another job at a cement company to qualify for a home loan. He and his fiancée, Jane Jackson, were planning to marry on St Valentine's Day, 2002. Their dream died with Mr Owen on 15 December 2001 when his head was crushed between the prongs of a robotic arm used to fill bags of cement.

In August 2003, a magistrate fined the company, ABC-Co, \$200 000 after it pleaded guilty to four charges, including failure to maintain a safe workplace and failure to provide adequate safety, training and supervision. 'Had they lived up to their responsibilities to provide a safe workplace the tragedy of Mr Owen's death would never have occurred', said the magistrate, labelling the breaches of safety by both ABC-Co and a supervisor, John Jones, as 'gross and systemic'.

Mr Owen, 31, was working in an area at the company's Pakenham plant where bags of cement were filled and lifted by a robotic arm onto a pallet. The Magistrates Court heard that a safety switch, which had been broken several times, did not shut down the machine or its robotic arm when Mr Owen entered the caged loading area.

The QC acting for WorkSafe Victoria said Mr Owen was not told the switch was broken and there was not a warning sign attached to the access gate. A manager at ABC-Co agreed that the enforcement of safety was 'clearly inadequate ... There can be a relaxing of systems that should not be relaxed', he said. 'It is a small and relatively intimate workplace ... a degree of informality

develops.' Mr Jones was convicted and fined \$5000 and ordered to pay costs of \$4000. The magistrate said Mr Jones had been 'somewhat hampered' by ABC-Co's 'unresponsive management'. ABC-Co was also ordered to pay \$15 000 in costs.

Mr Owen's brother, Harry, an employee at ABC-Co who had helped him get the job, said money was not enough. 'It will never bring him back', he said. 'You've got to comply with occupational health and safety ... We have to get the awareness out there.'

ABC-Co had spent more than \$650 000 improving safety since the incident, but that did not please Ms Jackson. 'Well, it's OK to do it afterwards, isn't it? I'd rather be proactive than reactive', she said.

ABC-Co chief executive Peter Thompson said the company deeply regretted Mr Owen's death 'and the circumstances surrounding it'. 'We would like to extend our deepest sympathies to David's family and friends', he said. 'We have continued to ... upgrade safety in our operations.'

Ms Jackson, who has suffered post-traumatic stress disorder from her partner's death, said she had told him not to take the job. She said she was 'completely open' to the prospect of seeking damages, pending the result of a coronial finding. 'He was taken away by the incompetence of a few people ... I don't think the fine was adequate enough but David's had his day in court', she said.

Source: Adapted from Jamie Berry, 'Company fined over man's death at hands of robot', *The Age*, 23 August 2003, p. 6. Note: Names in this article have been changed. © *The Age*, reproduced by permission.

Introduction

In Chapter 3 of *Human Resource Management in Australia* (DeCieri et al., McGraw-Hill Australia, North Ryde, 2003), we discussed the legal context for HRM in Australia. For human resource (HR) managers, legal issues such as occupational health and safety (OHS) are a major area of concern and activity. In addition to legislative developments, the management of OHS takes place in the context of significant changes affecting the workplace, including globalisation of markets, implementation of new technology, new forms of work organisation and structural changes in the workforce.¹ Overall, workplace and contextual changes have brought challenges and new demands for the employers and employees. For example, demands for flexibility and a higher quality of products and services influence organisations and individuals.² As the opening article shows, occupational health and safety is an important concern with significant personal and financial implications; failure to ensure the health and safety of employees can have tragic consequences.

We provide this chapter focusing on OHS to demonstrate that managers need not only to be familiar with the relevant legal context but also to develop a strategic, comprehensive approach to the management of OHS. Managing human resource activities, such as OHS, within legal constraints and in a strategic, proactive and preventive manner, is a source of competitive advantage.

Defining occupational health and safety

Occupational health and safety refers to the physical, physiological and psychosocial conditions of an organisation's workforce, related to aspects of work and the work context.³ With this broad perspective, effective OHS management relies on improving OHS conditions and preventing **hazards** in the work context by implementing comprehensive HRM and organisational strategies.⁴ This is discussed in the box 'A strategic approach to OHS' on page 6. The term 'workplace health and safety' is also increasingly used to highlight the fact that OHS issues arise at the workplace or are related to the workplace.

Typical health hazards include toxic and carcinogenic chemicals, physical and biological agents, dust, noise and heat. The ways in which people may be affected are diverse. Illnesses of the respiratory system, particularly chronic bronchitis and emphysema, represent a substantial category of occupational disease. Working in confined spaces and lifting heavy items are associated with many workplace injuries. Sprains and strains of joints and muscles are the injuries accounting for the highest proportion of all workplace injury cases.⁵

Also, job characteristics and the work environment should be considered in an analysis of factors related to work-related illness. For example, **work intensification**, high psychological demands, low decision latitude and poor social support—in combination—are suggested to be associated with premature development of cardiovascular symptoms and stress-related conditions.⁶

OHS also relates to psychosocial factors, which may result in conditions such as stress, dissatisfaction, apathy, inattentiveness and irritability. These include outcomes related to work-related injury and illness. Occupational stress has become a major area for research in several industrialised countries. A useful and generally applicable definition of work-related stress is: 'Occupational stress exists in the person's recognition of their inability to cope with demands relating to work, and in their subsequent experience of discomfort'.⁷

Mendelson offers a definition of the term **stress response** as encompassing 'the total of the individual's emotional and/or physiological response to the event(s) perceived or evaluated as a threat to his or her wellbeing'.⁸ The effects of occupational stress can be manifested in a number of ways. First, the effects of stress on productivity and work

occupational health and safety (OHS) the physical, physiological and psychosocial conditions of an organisation's workforce, related to aspects of work and the work context

hazards hazards are circumstances, procedures or environments that expose individuals to possible injury, illness, damage or loss

work intensification employees working longer hours and working harder than ever before

stress response an individual's emotional and/or physiological response to events perceived or evaluated as a threat to his or her wellbeing

performance will differ between occupations but research has consistently indicated that individuals experiencing stress are more likely to develop poor concentration and lack of attentiveness.⁹ This may have the combined effect of reducing work rates and increasing the likelihood of accidental injury. Second, the effects of stress may be evident in affective disturbances (such as irritability), behavioural manifestations (such as substance abuse) and psychiatric disorders (such as depressive disorders). Third, the physical effects of stress are seen in cases where, for example, the anxiety response to stress includes both psychological and physiological components. Among the long-term physical health effects of occupational stress, the most frequently cited conditions are: ischaemic heart disease, hypertension, peptic ulceration and diabetes.¹⁰ As the 'Managing the OHS implications of globalisation' box below illustrates, the impact of globalisation and an increasing emphasis

MANAGING THE OHS IMPLICATIONS OF GLOBALISATION

Fear and malice rule in an increasing number of Australian workplaces. It's not OK. There's every sign that the nation is paying an increasing price for it. 'On one hand, managements espouse the value of teamwork', says OHS consultant, Mr Bruce Parry. 'At the same time they create workplaces in which staff compete against each other for survival, everyone's being expected to do more work in less time, employees increasingly work longer hours, trying to make themselves stand out as stars. Many try to one-up their colleagues by withholding information. Knowledge is power, and the colleague who doesn't have it is made to look less efficient as a result.'

That's in the short term. In medium and long terms, stress leads to violence in the worksite, general increases in workplace conflict, and a rising tide of depression and anxiety that could become Australia's number-one health care problem in little more than a decade.

As marketing manager of the Australian OHS counselling company IPS Worldwide—and a workplace counsellor—Bruce Parry sees no reason to believe that things are going to get much better. In fact, he sees no reason to believe they'll become any better at all. The increasing level of emotional problems in the workplace is caused largely by what Mr Parry describes as the long-term stress due to a sustained period of change over the past five years.

'The only constant for many workers has been change', he says. 'Downsizing has reduced the number of jobs in many organisations. The survivors are worried about whether they can retain their jobs. They're worried about how longer hours are affecting their families and their health and community relationships. Those who work for multi-nationals, particularly American companies, have extra problems because head offices seem to have no idea of time zones. Australians stand by at home for 3 am teleconferences. Then they get through the day on three hours sleep.'

Globalisation means that many Australians must work to American standards and practices, and these already seem to have dire effects on an increasing share of that nation's workforce. IPS's Parry expresses certainty that depression will be the number one OHS problem in American companies within ten years, at an estimated national cost of US\$30–40 billion a year.



But to the superficial manager, that's a later decade's problem. Former General Electric chief executive Jack Welch remains widely honoured as the United States (US) manager of the (twentieth) century in large degree for sacking large numbers of employees and selling off low-earning company activities. GE today trains its aspiring young managers to what it titles 'black belt' standard: it's a war out there, and these people are armed for it.

Following 'efficiencies' in the US Postal Service, the American language acquired a new phrase: 'going postal' was coined after episodes in which disaffected postal employees brought a gun or guns to work, shot as many colleagues as possible and often then shot themselves.

'There's no sign the pressure cooker is going off the boil', says Bruce Parry. 'I tell my clients the only thing I'm sure of is

that the stress is going to increase. Learning to manage stress is no longer a luxury, it's a necessity. And long-range distress leads to depression, anxiety and aggression, and at many workplace levels. Managers who are depressed make very bad, haphazard, emotional decisions, and from these flow further OHS implications.'

Increasing workplace stress creates a need for increasingly sophisticated person management: the increasing practice of dumping or downgrading employees because they take family responsibilities seriously is replaced in some corporations by helping family members integrate their life and work by childcare or elderly-parent care assistance.

In Australia as elsewhere, counsellors are called to non-functional work teams to encourage employees not to take out their aggression on each other—or customers. 'We don't try to make them all buddies,' says Parry, 'but we can establish lines of respect and encourage them to deal with the issues they can resolve, and live within those that they can't'.

Source: 'Tackling the crisis of fear in the workplace—occupational health and safety: a special advertising report', The Australian, 20 August 2003, p. 24. © News Ltd. Reproduced by permission.

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A STRATEGIC APPROACH TO OHS

Achieving a uniform, let's-cover-every-base approach to workplace safety is the great challenge faced by governments in OHS. The

task of government is made harder because some industries are more dangerous than others and some companies do a better job of providing a safe workplace. There are plenty of examples of severed limbs, industrial blindness and death to suggest that Australia's health and safety laws can work better. Bridging the safety gap and ensuring that cowboy operators are identified and reformed has been the challenge for OHS regulators for fifty years.

But there are now encouraging signs that Australian industry is making safety a core management issue and that its record is improving. Most Western governments recognised in the 1970s that they could no longer be the eternal watchdog of workplace safety. Until then, they took a prescriptive approach, employing armies of inspectors to visit factories and construction sites and hand out penalties for infractions. Governments believed they could make OHS rules specific to all workplaces and more or less told industry what to do.

That approach dramatically changed in 1972 after a British inquiry was headed by the industrialist Lord Robens who saw that industry processes were changing too quickly for governments to keep up. He ushered in the concept of 'duty of care' by employers to provide safe workplaces. Duty of care today underpins OHS laws in all states and territories, with infractions of this general, self-regulatory concept subject to a range of penalties through the courts. Putting the onus firmly on the shoulders of business to provide a safe working environment appears to have worked.

Claims for compensation for work accidents and fatalities in Australia have gradually fallen over the past decade. Workers compensation-based data indicates a continuous improvement in Australia's OHS performance

over the past six years. This trend has been notably evident in four of the most dangerous industries: construction, transport and storage, manufacturing and mining.

But it's not just industry's broader responsibility for safety that is encouraging business to lift its game. Experts say the shift to computer-driven supply chain management systems and recognition by more chief executives that OHS issues can affect a company's profits, and public standing, is also driving change. New technology in industry is also helping to keep accident rates in check.

Colin Findlay, who lectures in OHS at Melbourne's RMIT University, says new technology has saved a lot of injuries.

Findlay says manual handling accidents were a big problem until a few years ago. On most multistorey building sites today, there is a forklift device on each floor that picks up and moves loads of bricks and cement. Ten years ago, those loads would have been moved manually by workers.

There is a similar push to safety-driven mechanisation in the resources sector, where accident rates are notoriously high and where the public relations fallout can be just as bad. [In July 2001] the Victorian Supreme Court imposed fines of \$2 million—the maximum penalty under Victorian law—on Esso for the Longford refinery explosion that killed two Esso workers. The fines were criticised as inadequate by the Australian Council of Trade Unions (ACTU). Esso and its parent, ExxonMobil, also faced a barrage of criticism over the incident, which was covered extensively by international as well as local media.

The chair of the National Occupational Health and Safety Commission (NOHSC), Professor Dennis Else, says one of the benefits of globalisation is that it makes the OHS performance of multinational companies around the



on workplace competitiveness has important implications for OHS matters such as the management of stress in the workplace.

We suggest that OHS concerns should be viewed as part of an integrated human resource management strategy. Therefore, job-related stress, and several other workplace issues that are related to OHS, such as workplace bullying, emotional labour, drug testing in the workplace, and employee assistance programs, are discussed in more detail in Chapter 15, *Managing employee retention and turnover*. As the box 'Drug testing in the workplace' on page 8 shows, these issues are complex and encompass a range of human resource management concerns in addition to occupational health and safety.

Occupational health and safety statistics in Australia

Work-related injury, illness and death are widely acknowledged to be major social and economic problems in Australia and many other industrialised nations.¹¹ While substantial improvements in health and safety have been achieved in the past decade or so, recent Australian statistics show the need for OHS to be recognised as an important area for

world more transparent. According to Else, the key problem with the old prescriptive OHS approach is that it does not encourage individual managers to implement safety solutions at a local level.

The need to devolve responsibility for safety to individual managers and workers down the chain of command in an organisation is widely seen as Australian industry's number one safety challenge. 'Very often people who have the authority to change the work situation have never looked at the problem', says Professor Stephen Johnston, an OHS specialist with the University of Technology, Sydney. 'The power to improve the situation is with management. But the management hasn't necessarily asked the people doing the job what the problems are or empowered them to do anything about them', Johnston says. He says there has been a change in industry attitude which now acknowledges that accidents aren't acceptable and that they are avoidable. Good safety records depend on the quality of leadership in particular industries and companies, he says.

One of the problems is that we are in transition from a government-regulated system to a more United States-style model, where the control is: 'If you can't get insured, you can't operate'. And in any transitional situation there are going to be holes and people are going to fall through them.

One policy initiative of the NOHSC, which Else heads, is the National OHS Improvement Framework. Aimed at reducing the incidence and severity of work-related injury and disease, the framework was introduced by the Workplace Relations Ministers' Council in 1998. The ten-year program allows all Australian governments, OHS agencies and workers compensation bodies to compare their data and activities across nine key safety action areas.

For Else, an encouraging sign for the future is industry's preparedness to use supply chain management systems to manage safety. He says this technology allows the pinpointing of information to specific problem areas, not only to departments in a large organisation, but also to their suppliers and contractors. For example, he says, a wholesaler of dry-cleaning products can use supply chain management to educate a suburban dry-cleaner about

the most dangerous chemicals they are using and dangerous work situations. 'Companies at the proactive end of industry are finding much better ways of measuring performance than just waiting for the blood on the floor (to appear)', Else says. 'They are starting to measure "need indicators", such as the time taken to fix things up. They are starting to measure the speed with which their own organisation responds to OHS patterns that have been identified, and they're putting controls in place. Once you start to get that stage of information flowing back to the workplace, people realise that management is taking OHS as seriously as it takes production.'

Else says there is widespread acceptance that government enforcers can't keep up with industry. 'There is no government in the world that is going to employ an army of inspectors and check every workplace against the standards. You have to find smarter ways of making sure that you can assess the performance of organisations in the way they comply with general duties of care.'

Still, he cautions that the duty of care freedom given to industry in the past twenty-five years may not go far enough, adding that the Robens model, which relied on large, heavily unionised companies with slow-moving technology, may be passe. Else says OHS management can get too theoretical for its own good. 'You don't want managers writing reams of documents that sit on the shelf and don't bear any relationship to what people in the workplace are doing.'

Source: Chris Tolhurst, 'Room for smarter approaches', Australian Financial Review, 15 August 2001, p. 8. Reproduced by permission.

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improvement. Two thousand or more Australians die each year from workplace incidents and disease, approximately one in every twenty workers will suffer a work-related injury or disease, and cost to the Australian economy is around \$30 000 million per year.¹² Preliminary data show that in 2000–01 there were 319 compensated fatalities in Australia that were a result of workplace activity. It is noteworthy that 287 (90 per cent) of the compensated fatalities were of males; only 30 (9.4 per cent) were female. For compensated cases, intermediate production and transport workers have by far the highest incidence and frequency; that is, they represent the 'most dangerous' occupations. The transport and storage industry (39) and the construction industry (31) recorded the highest number of fatalities.¹³

The total preliminary number of workers compensation cases reported in 2000–01 resulting in a fatality, permanent or temporary disability and an absence from work of at least one week was 142 697 (approximately 70 per cent were male). Nationally, the mining industry had the highest incidence rate (35 cases per thousand employees), and the construction industry had the highest frequency rate (17 cases per million hours worked). Labourers and related workers in 2000–01 were the occupational group with the highest incidence rate (47 cases per thousand employees).¹⁴

DRUG TESTING IN THE WORKPLACE

WMC Resources conducted thousands of random drug and alcohol tests last year, but it wasn't just the labourers at its nickel smelters and uranium mines who were asked to pee into a cup. Everyone was potentially subject to testing, from junior apprentices to the most senior managers.

Whether it's binge drinking at the mine or substance abuse in CBD office towers, corporate Australia is increasingly cracking down on drug taking. WMC, Qantas and building products group Hanson are just three of a growing list of companies that are subjecting staff to random drug tests. They claim they are necessary to ensure a safe working environment.

Although testing blue-collar employees has long been justified as critical for safety, the same cannot be said for white-collar workers. And concerns remain as to whether the intrusion into private lives is justified. A federal government committee has urged state and Commonwealth governments to consider making legal changes to address privacy concerns about drug screening.

It also wants to develop best-practice guidelines for testing and a more thorough examination of the prevalence of drug abuse in Australian workplaces. A spokesman for the outgoing Minister for Employment and Workplace Relations, Tony Abbott, said yesterday the department was 'considering the recommendations and the minister is awaiting their advice'.

A national drug strategy household survey in 2001 found that only 4.3 per cent of respondents had gone to work when affected by alcohol during the past 12 months and 2.3 per cent when under the influence of other drugs. The National Occupational Health and Safety Commission also reported that in 39 per cent of all workplace deaths the cause was alcohol consumed at work during normal duties or at a work-sponsored function.

So why is the push for testing gaining momentum?

The issue grabbed headlines earlier this year when Qantas mounted an aggressive push to introduce compulsory random drug and alcohol testing for its employees, the largest unionised workforce in Australia.

'One needs to ask, where is all this passion for [policing] drug and alcohol from?' asks Yossi Berger, the Australian Workers Union national occupational health and safety officer. '[But] I do not think there is a big problem of workers jumping up and down and clicking their safety boots because they are half pissed or drugged out of their mind.'

Qantas unions are still resisting the push, but the company has conducted a one-week trial and drug tested more than 100 executives in its Sydney office. A Qantas spokesman declined yesterday to reveal if there had been any positive results, citing privacy reasons.

Darron Brien, from workplace testing company Drug and Alcohol

Testing Services, says there has been a 'fairly dramatic' growth in demand for his services from companies which believe benefits include improved productivity, lower absenteeism and fewer costly mistakes from substance abuse. The firm, which can run tests for drugs such as marijuana, cocaine, heroin and methylamphetamines such as ecstasy, has had positive results from 'all realms of society', ranging from trainee apprentices to the heads of administration in share market-listed companies, he says.

Industries such as coal mining have long carried out routine testing, but Brien says more employers are interpreting their legal obligations to provide a safe working place to include testing a broader range of employees for drugs.

A representative of another drug testing service told the *Australian Financial Review* there was a huge potential upside in the market. 'Why not? If you look at white-collar crime, what's the instance of cocaine abuse?' he said. 'If you are a high flyer in the financial sector or you're a trader in the stock market, if you sit down and logically look at workplaces and what they do and ask how might they be affected if their judgment was impaired ... there's your potential.'

Another factor driving the spread of drug testing is continued resistance from blue-collar workers to submitting their bodily fluids to tests. Head office reasons that if managers do it, there will be less reluctance from the rest of the workforce. Building materials company Hanson, which has had a drug and alcohol testing policy since the mid-1990s, introduced random checks at its head office for management last December. Drug tests 'need to apply to everyone and lead by example', says a company spokesman. 'We believe that we have to have equal rules.'

There was only one positive drug test from WMC's Perth office last year, compared with 117 for its Olympic Dam copper operation in South Australia. WMC's general manager for safety, health and environment, Martin Webb, says screening all workers helped ensure there was no backlash against the testing, which he stresses is part of the company's broader 'Fitness for Work' program for employee health and safety. 'We do get asked questions in our anonymous Q&A process about why we do test head office people', he says. 'The response we give to them is ... we have policies that apply to everybody.'

The investment banking industry has long been rife with rumours of cocaine, beluga caviar and cavorting with strippers. However, one investment banker says: 'I don't think it's widespread, but I might be horribly wrong. Maybe it's the younger, forex-market end where they just love talking it up: "I drive a 911 Porsche and I snort coke" ... that sort of thing.'



COMPETING
IN THE
KNOWLEDGE
ECONOMY

Many major investment banks including those from the United States do not conduct workplace drug testing but have policies prohibiting drug use. JPMorgan does not test its employees, but a spokesperson says it has 'very strict and well-communicated employee policies that absolutely prohibit the use of illicit substances by staff in the workplace or while representing the firm'.

Goldman Sachs JBWere does not conduct drug testing in Australia, nor do Credit Suisse First Boston or Merrill Lynch. Deutsche Bank Australia and New Zealand does not drug test new recruits or conduct random tests, but it has a global policy that explicitly prohibits the use of 'recreational or other narcotic drugs'.

The policy manual for Deloitte Touche Tohmatsu says taking, possessing or buying illegal drugs will not be tolerated in the office or on the job because it not only poses a potential safety threat but could affect the firm's 'credibility and reputation'. Workers who breach the policy could be disciplined if the problem repeatedly interferes with their work. They could be asked to leave the office or referred to the employee assistance program for counselling. But a spokeswoman says the firm would 'never do anything as intrusive' as run tests.

The lack of a combined and concerted push in Australia by US investment banks seems to belie their experience at home. US legislation in 1988 requiring some federal contractors to promise to provide drug-free workplaces has spurred massive growth in drug testing by employers.

In some parts of the US, school students must take a drug test to be in the school band.

And, despite the investment bank example, some fear momentum for drug testing in Australia is being fuelled by the US experience. The director of the drug and alcohol service at St Vincent's Hospital in Sydney, Alex Wodak, says, 'some companies are misguided enough to follow movements in the US and feel that advanced corporate behaviour means testing. But it's a very inefficient use of resources and, generally speaking, the drugs they should be testing for like alcohol they're not'.

Unions argue that the big problem with the tests is that they don't screen for impairment of the employee's ability but merely for the presence of an illegal substance in the employee's system.

Australian Workers Union national secretary, Bill Shorten, says, 'The argument is that they are testing for impairment. Some of the tests they want to use are more testing for what you did at the weekend than whether you are impaired. There is a great deal of imprecision'.

But such is the rush to embrace drug testing that even companies previously cool about the idea are feeling compelled to test.

'As the momentum has gathered somewhat, they have been concerned that they are the odd one out and may feel more exposed legally', says Stephen Allsop, from the Drug and Alcohol Office of Western Australia and the coeditor of *Drugs and Work:*

Responding to Alcohol and Other Drug Problems in Australian Workplaces (IP Communications, Melbourne, 2001). 'A common problem in the drug field is the lure of the single answer and masterstrokes. Drug testing should be the last thing that a company does, not the first thing a company does. First and foremost, a company should examine the things in the workplace which contribute to hazardous drug use. Do they have quality supervision? How do they manage occupational health and safety generally? Have they developed a consultative policy with their employees?'

Ian Gardner, immediate past president and counsellor with the Australasian Faculty of Occupational Medicine, has concerns about requiring employees to submit to drug screening unless public safety is clearly at stake, such as if the employee is an airline operator. Gardner warns that workers can view testing as an invasion of privacy and says the efficacy of many tests used widely in some parts of Australian industry are largely unproved by large, rigorous studies.

But he is particularly worried that the market is being driven by 'snake-oil merchants' touting their wares.

Allsop claims that although some operators are careful, 'there are other people whose primary motivation is making money for their product, and it is not in their interest to extol the limits of their product'.

In its recent report, the federal government's family and community affairs committee backed these concerns. It said large studies had not been done to validate the testing and it was 'concerned about the flimsy basis on which drug testing has been built'. It concluded that it was too early to recommend that all workplaces be required to implement testing.

But even the testers themselves want to see improved regulation of workplace drug testing. Brien, of Drug and Alcohol Testing Services, says that while his staff undergo training designed by leading forensic toxicologists and comply with guidelines from Standards Australia, credible operators can be stigmatised by charlatans.

Unions argue that drug testing ignores other major factors that can impair a worker's productivity and performance stress and fatigue. Says the AWU's Yossi Berger: 'When I say to employers that if you take a sample of drugs of this worker at 3 am to check for your favourite drugs and alcohol, then I want 50 per cent of the sample so I can test for what the workplace is putting into their system for things like fumes and diesel, as well as what the roster may be doing to his hormones, they get very shy about that equity'.

Source: Adapted from Annabel Hepworth, Marcus Priest & Annabel Day, 'Drug tests in the office: you may be next', *Australian Financial Review*, 3 October 2003, p. 1.

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Australian occupational health and safety law

OHS law in Australia has three sources, namely common law duty of care, criminal law and statute law (see Chapter 3).

- 1 *Common law.* Common law (judge-made law, as opposed to acts of parliament) establishes the duties that one individual or group owes to another.¹⁵ Employers, employees, contractors, manufacturers and suppliers all have common law duties with regard to OHS.¹⁶
- 2 *Criminal law.* It is possible for OHS incidents to lead to criminal law charges. For example, a workplace death may lead to a charge of manslaughter against individuals and companies involved in the death.¹⁷ On 27 November 2003, the Australian Capital Territory became the first Australian jurisdiction to introduce industrial manslaughter laws. The *Crimes (Industrial Manslaughter) Amendment Act 2003* came into effect on 1 March 2004. There is current debate in other Australian jurisdictions about whether to enact similar industrial manslaughter legislation.¹⁸ The 'Managing people' article at the end of this chapter discusses workplace deaths in more detail.
- 3 *Statute law.* Statute law (also known as legislation) is made by an act of parliament. Individual statutes are known as 'Acts', such as the *Occupational Health and Safety (Commonwealth Employment) Act*. OHS legislation covers a broad range of issues relating to the workplace environment, the work performed and the people involved in or affected by work activities. OHS is regulated by the federal, state and territory governments. However, the responsibility for OHS in Australia rests primarily with the states and territories. Each state or territory has its own legislation and OHS authority, which is responsible for implementing legislation, inspecting workplaces and prosecuting legislation breaches.

In the past two decades, governments have been moving away from prescriptive legislation towards performance-based provisions, which define OHS standards to be met and enable employers to make decisions about how best to implement OHS in their workplace.¹⁹

The development of regulation and policy with regard to OHS in Australia is indicative of the increasing attention given to OHS across many industrialised nations. Historically in Australia, differences in legislation across the states and territories led to different systems, inadequate information passed between compensation bodies and agencies, and little constructive information about OHS issues was provided to the Australian public.²⁰ The proclamation of OHS legislation in Australia, as in many other industrialised nations, reflects the emergence of the holistic view that unsafe physical, physiological and psychosocial conditions in the work environment, as well as unsafe actions, need to be eliminated. There is considerable evidence that OHS legislation has played an important role in the reduction of work-related injury, illness and death, although these remain significant concerns.²¹ Recent developments in OHS legislation and policy parallel developments in industrial relations, particularly devolution to enterprise bargaining.²² (See Chapter 7, Industrial relations.)

Historically, the need for regulation of OHS was recognised in Europe with the advent of the industrial revolution in the nineteenth century; legislation was required to deal with the increasing risk of injury and illness that arose from the introduction of new machines and workplace processes.²³ Although concern for worker safety would seem to be a universal societal goal, comprehensive legislation regarding OHS did not emerge in this country until the mid-1980s. Australian OHS regulation was strongly influenced by developments in the United Kingdom in the 1970s, in particular the Robens Report.²⁴

The Robens model had two principal aims: to create a unified approach by bringing together OHS legislation into an umbrella statute containing 'principle-based standards'²⁵ applying to a range of workplace parties; and to create a more 'effectively self-regulating system'.²⁶

Lord Robens, an industrialist, introduced the concept of **duty of care** by employers to provide safe workplaces. Duty of care today underpins OHS laws in all Australian jurisdictions; breaches of this general, self-regulatory concept are subject to a range of penalties through the courts.²⁷ Duty of care requires everything *reasonably* practicable to be done to protect the health and safety of the workplace. It is placed on all employers, their employees and any others who have an influence on the hazards in a workplace. Typical employers' duties under the OHS Acts include: providing workplaces and systems of work that are safe and without risks to health; making arrangements for the safe use, handling, storage and transport of plant and substances at work; and providing adequate information, training and supervision for employees. Typical employees' duties include: not endangering their own or others' safety and health through any act or omission; and cooperating with measures introduced to protect their own and others' safety and health.²⁸

duty of care
the requirement for everything reasonably practicable to be done to protect the health and safety of the workplace

Australian federal occupational health and safety legislation

The Australian Federal Government introduced the *National Occupational Health and Safety Commission Act* in December 1985. By 1995, each of the Australian state and territory jurisdictions had enacted OHS legislation based to some extent on the Robens model.²⁹

Table A shows the major federal OHS-related legislation in Australia. The *National Occupational Health and Safety Commission Act* established the National Occupational Health and Safety Commission (NOHSC), which comprises eighteen members representing employers, unions and government, and employs public service researchers. The NOHSC was established to lead and coordinate national efforts and campaigns to prevent workplace

Table A Principal federal legislation related to OHS

The *Commonwealth of Australia Constitution Act 1900* constitutes the Commonwealth of Australia. Section 51 constitutes the basis for federal parliament's legislative power in relation to OHS.

National Occupational Health and Safety Commission Act 1985 established the National Occupational Health and Safety Commission.

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* aims to promote the occupational health and safety of persons employed by the Commonwealth and Commonwealth authorities.

The *Occupational Health and Safety (Maritime Industry) Act 1993* provides for the health and safety of persons working on ships and offshore industry mobile units.

The *Industrial Chemicals (Notification and Assessment) Act 1989* established a national system of notification and assessment of industrial chemicals: information about the properties and effects of the chemicals is obtained from importers and manufacturers of the chemicals.

The *Federal Court of Australia Act 1976* includes provision for the constitution of an Industrial Branch of the Federal Court of Australia. Part of the jurisdiction of the court is the interpretation of industrial awards and agreements that may contain OHS provisions.

The *Workplace Relations Act 1996* relates to the prevention and settlement of certain industrial disputes. Part V of the Act deals with inspectors and their powers to investigate matters affecting the safety of employees.

Source: Adapted from *Occupational Health and Safety Commentary and Cases: Legislative Overview*, 2004, CCH Australia Limited, North Ryde.

injury, disease and fatality in Australia. It does not have the power to make or enforce legislation.

It should be noted that in May 2004, the federal government announced that the NOHSC will be replaced by a smaller ministerial advisory group. This decision has been criticised by employers and unions as a 'cost-cutting measure that could undermine moves towards national health and safety'.³⁰ A related issue is that funding for Worksafe Australia has been reduced—this has led to concerns about who will take responsibility for research related to the impact of specific hazards and the development of OHS standards.

Australian state and territory occupational health and safety legislation

The broad philosophy of state and territory OHS legislation is to improve safety standards to meet the requirements of a dynamic, technologically advanced industrial society. The various OHS Acts place obligations on employers, occupiers of premises, manufacturers, suppliers, employees, self-employed persons and the Crown to ensure the safety of employees and others (visitors, contractors, etc.) in their workplaces.³¹ The legislation places an obligation on all employers and employees to maintain a secure, healthy and safe working environment, with emphasis placed on duty of care and co-regulation by managers and employees.³²

The Acts show combinations of preventive, punitive and OHS promotion measures. Legislation enacted in Australian states and territories has become quite consistent, although there are some differences with regard to penalties and varying emphasis on punishment. For example, at present, the maximum penalty for a breach of OHS law in Victoria is \$250 000 for a company and \$50 000 for an individual; in New South Wales, these penalties are \$550 000 and \$55 000 respectively. Some of the features of the principal legislation are outlined below.³³

- *Queensland.* The *Workplace Health and Safety Act 1995* is the principal OHS law in Queensland. It promotes and protects freedom from the risk to persons of disease or injury that may be caused or created by workplaces and workplace activities. The Act established an OHS council and industry committees. The Act also covers OHS representatives, committees and safety officers; the making of OHS standards; imposing OHS obligations on persons who may affect the health and safety of others; the appointment and powers of inspectors; and enforcement procedures. Amendments to the Act, effective 1 June 2003, clarify the obligations of all stakeholders, amend the powers of inspectors and increase penalties. The *Workplace Health and Safety and Other Acts Amendment Act 2003* widened the obligations of employers to ensure the safety of all persons working from the conduct of the employer's business or undertaking.³⁴
- *New South Wales.* The principal Act covering occupational health and safety in New South Wales is the *Occupational Health and Safety Act 2000*. This replaced the 1983 Act and includes several changes. For example, the absolute duty of employers to provide a safe workplace is more clearly emphasised in the 2000 Act than in the previous 1983 Act. The 2000 Act also emphasises the need for employers to consult with employees on OHS matters and agree on arrangements to maintain ongoing consultation, whether through a committee, a safety representative, through other arrangements or a combination of these arrangements. The 2000 Act addresses the roles of safety inspectors, including their use of investigation, improvement and prohibition notices. The 2000 Act contains expanded provisions relating to criminal and other proceedings, and includes sentencing guidelines.
- *Victoria.* The principal Victorian legislation is the *Occupational Health and Safety Act 1985*. The Act contains, in addition to the general provisions relating to OHS, provisions for

OHS representatives and committees, inspections, improvement and prohibition notices, and legal proceedings. In 2004, the Victorian OHS laws are under review for the first time in almost twenty years. A report containing wide-ranging recommendations was delivered in April 2004 by Chris Maxwell QC. The report has been referred for further consultation before legislation is introduced to deal with the recommendations.³⁵

- *Tasmania.* The Tasmanian *Workplace Health and Safety Act 1995* applies in all workplaces, including mines. It introduced performance-based legislation to Tasmania and sets out the duty of care of the various workplace parties. Workplaces where hazardous work is carried out may be declared as 'designated workplaces'. Before work begins at a designated workplace, the employer must notify the Director of Industry Safety. The Act provides for the establishment of OHS committees and for the issue of codes of practice. The functions and powers of the Chief Executive of Tasmania Development and Resources (TDR) and Workplace Safety Tasmania under the Act are also specified. The Act was amended by the *Workplace Health and Safety Amendment Act 2002*, which includes increased penalties.
- *South Australia.* The principal Act in South Australia is the *Occupational Health, Safety and Welfare Act 1986*, which aims to: secure the health, safety and welfare of persons at work and eliminate risks to their health, safety and welfare; protect the public against risks to health or safety arising out of or in connection with the activities of persons at work; involve employees and employers in issues affecting occupational health, safety and welfare; and encourage registered associations to take a constructive role in promoting occupational health, safety and welfare improvements.
- *Western Australia.* The principal Western Australian OHS statute is the *Occupational Safety and Health Legislation Amendment Act 1995*. In addition to the general provisions relating to OHS, this Act established what is now known as the WorkSafe Western Australia Commission, which makes various recommendations to the relevant minister about OHS.
- *Northern Territory.* The principal occupational health statute in the Northern Territory is the *Work Health Act 1986*. In addition to various general provisions relating to OHS, this Act established the Work Health Authority and the Work Health Advisory Council.
- *Australian Capital Territory.* The principal OHS legislation for private sector employees in the Australian Capital Territory is the *Occupational Health and Safety Act 1989*. The Act establishes the OHS Council, sets out the duties of various workplace parties and provides for health and safety representatives and committees. Emergency procedures and the use of improvement and prohibition notices are also covered.

Overall, a wide range of OHS matters are typically covered in OHS state and territory legislation.³⁶ Common requirements in OHS Acts around Australia include:

- promotion of OHS in the workplace
- provision of safe work systems
- prevention of industrial injuries and disease
- protecting the health and safety of the public in relation to work activities
- specification of penalties for breaches of the Acts
- rehabilitation and maximum recovery from incapacity of injured workers.

Occupational health and safety enforcement authorities

Each OHS Act provides for a regulatory authority to administer OHS law in that state or territory. These authorities comprise an administrative structure and an inspectorate with responsibility for enforcing OHS laws. OHS authorities provide both information and assistance, and enforce legal compliance. The emphasis of these authorities is on voluntary compliance with OHS legislation.

Workplace inspectors have powers including:

- entering workplaces to conduct searches, inspections, examinations and tests
- taking samples, photographs and other evidence
- requiring persons on the premises to provide information
- requiring occupiers to provide assistance and facilities to carry out their duties including the power to stop the use of anything on the premises (as long as notice is given)
- inspecting records and taking copies of records
- serving improvement notices requiring a person to remedy a contravention of an OHS Act (fines may be imposed if there is failure to comply)
- serving prohibition notices preventing an activity from being carried out due to an immediate risk to the health or safety of a person (fines may be imposed if there is failure to comply)
- initiating prosecutions for breach of OHS law in the relevant court.³⁷

The OHS authority has the discretionary power to decide whether to prosecute. For example, an authority will prosecute if investigations reveal circumstances such as offences involving risk of death or serious injury, or if prosecution is considered to be in the public interest. The OHS Acts typically include penalty provisions for non-compliance, specifying the maximum fine or prison sentence that can be imposed by the relevant court.

Complementary Regulation

In each jurisdiction, the principal statutes are complemented by a number of other Acts and Regulations. Despite the trend towards consolidating all the OHS laws, there are many OHS statutes in each state and territory. Specific OHS statutory obligations must be considered in the context of the general statutory duties imposed by OHS legislation.

- *Workers compensation and rehabilitation legislation.* One of the major areas of legislation related to OHS Acts is workers compensation and rehabilitation legislation, which provides compensation to injured employees, regardless of who is responsible for a workplace illness or injury. Prior to the introduction of workers compensation and rehabilitation legislation, injured employees could only bring a common law action against their employer, which required proof of negligence by the employer or a person acting on behalf of the employer. Current workers compensation and rehabilitation legislation in each Australian state and territory has either abolished or severely limited the rights of workers to sue for common law negligence. Hence, the most common OHS legal action by employees are workers compensation claims.³⁸ The cost of administering the Australian workers compensation schemes in 1999 to 2000 was \$1020 million. Payments made by the schemes on medical and other services in the same year were \$1060 million.³⁹
- *Vocational rehabilitation.* A key feature of workers compensation regulation and policy in Australia is the encouragement of **vocational rehabilitation**. The 'return-to-work' policy is based on the joint assumptions that this will be of benefit to individuals and reduce the costs of compensation. Australian jurisdictions have included vocational rehabilitation and return-to-work strategies in the relevant legislation, partly as a means of providing some employment security for injured workers. The incidence of injured workers being dismissed is largely unknown due to a lack of national statistics, but the impact of employment loss is known to be substantial for the individuals, their families and the general social security system.⁴⁰ Overall, there is increasing use of rehabilitation facilities to assist in the return of workers to the workforce after OHS incidents. Hence, there has been substantial growth in the rehabilitation industry and the importance of rehabilitation as part of managing OHS in the workplace.

vocational rehabilitation
occupational reintegration, or
return-to-work, for injured
workers

- *OHS Regulations.* OHS Acts often set out broad objectives and contain provisions for achieving these objectives. Detailed provisions are often set out in legally binding Regulations made under the relevant Act. OHS Regulations contain provisions relating to, for example, the appointment of safety officers, the election of health and safety committees, workplace inspectors' powers, workplace amenities (such as lunchrooms, toilets and washing facilities), specific processes (such as spray painting), and workplace hazards (such as asbestos).⁴¹

When the need arises to change the way in which a specific area or problem is addressed, regulations may be added or amended in a quick and effective manner, thus circumventing the more laborious measure of amending a statute.⁴²

- *Codes of Practice and National Standards.* Codes of practice are issued by the Commonwealth, states and territories to advise employers, and others with obligations under the legislation, how to comply with the legislation. For example, there is a national code of practice for healthcare workers and other people at risk of the transmission of HIV and hepatitis B in the workplace. Where specific technical detail is needed, codes of practice may refer to Australian standards and international standards, such as those of the ISO (International Standards Organisation).⁴³ National standards are regulatory models developed by the NOHSC. They incorporate nationally agreed minimum standards of OHS to be achieved by the federal, state and territory governments. The NOHSC has also developed national codes of practice. Overall, codes of practice and standards provide guidance on setting up safe systems of work.

Occupational health and safety and industrial relations

In each Australian jurisdiction, as has been discussed, there is a principal, wide-ranging OHS Act. These Acts, which aim to increase self-regulation of OHS following the Robens model, are reviewed on a regular basis by tripartite committees (government, employer and union representatives), and unions are often involved in workplace OHS committees. The self-regulatory approach encouraged in OHS legislation is based on the assumption that employers and employees share a common interest in OHS; it also assumes a well-organised trade union movement.⁴⁴ However, changes in Australian industrial relations legislation (see Chapter 7) lead these assumptions to founder. Just as the negotiation of working conditions has been decentralised to the workplace, the participation of unions in negotiating working conditions has been reduced.⁴⁵ Under the *Workplace Relations Act 1996* (Cwth) (see Chapters 3 and 7), OHS can no longer form part of award deliberations, as OHS is considered a 'further matter' to be decided at the workplace. Hence, although there is widespread recognition of the relationship between OHS and industrial relations, there appears to be a 'disparity between OHS and industrial relations regulatory frameworks. While OHS legislation relies on the involvement of unions and various government bodies in setting and monitoring OHS standards, industrial relations legislation actively discourages third party involvement, particularly union involvement, at the workplace'.⁴⁶ (See Chapter 7 for more discussion of industrial relations.)

Moving beyond occupational health and safety legal compliance

Overall, the effective management of OHS demands knowledge of the current legal requirements relevant to one's workplace and/or organisation. Legislation has been unquestionably successful in raising the level of awareness of OHS in Australia. Yet, legislation alone cannot solve all the problems of workplace health and safety. Many industrial injuries are a product of unsafe

behaviours, not unsafe working conditions. Major behavioural changes cannot be expected unless employees and employers are convinced of the importance of OHS.⁴⁷

Several governments including the Victorian State Government, have used advertisements in their efforts to raise awareness and reduce workplace fatalities. To fully maximise the health and safety of workers, employers need to go well beyond the letter of the law and embrace its spirit. National initiatives to raise awareness of OHS include Occupational Health and Safety Week, an annual awareness program, which runs in the first week of May each year. This week follows the International Day of Mourning—a day to remember those who have been killed at work.

Since conforming to the legislation alone does not necessarily guarantee OHS, many employers go beyond the letter of the law. Effective management of the diverse needs of the workforce and the complex workplace context for OHS requires more than legal compliance. In particular, the challenges related to managing an ageing workforce are particularly relevant to OHS. In the next section, we focus on OHS issues for the ageing workforce. Then, we show how these and other issues can be managed through organisation-based OHS management systems that not only comply with OHS legal requirements but are integrated with a strategic approach to human resource management.

Occupational health and safety and the ageing workforce

The increasing proportion of **older workers** has several important implications for OHS management.⁴⁸ The increase in the average age of workers is a dominant characteristic of the workforce in Australia and many other industrialised nations. The ageing of the workforce reflects the increase in life expectancy of the population to between 75 and 85 years of age, as well as a sustained low level of fertility, which has resulted in proportionally fewer children in the population.⁴⁹ Improvements in medical treatments and technology, and the uptake of healthier dietary habits and lifestyles will continue to contribute to increased numbers of older persons who are physically capable of working.⁵⁰

A range of statistics show the need for attention to issues of concern to older workers, and the need for OHS education and management strategies that have the flexibility to address the diverse needs of older workers. The ageing of Australia's population is expected to continue for at least the next fifty years. The proportion of the Australian population aged 65 and over is projected to increase to 24 per cent by 2051. In 1996, the proportions of men and women aged 65 and over were 11 per cent and 14 per cent respectively. By 2051, 22 per cent of men and 26 per cent of women (6 million people) are expected to be aged 65 years and over.⁵¹ There has been a decline of older workers in some industries, such as manufacturing, mostly due to declining labour force participation of males.⁵² Female participation has increased over the past thirty years for all age groups except 65 and above.⁵³ Changes such as the increase in service and information sectors, particularly in part-time employment, have contributed to the gender differences in employment of older workers. This gender difference is also evident in other industrialised nations.⁵⁴

Given the complexity of the data and diversity in the population of older workers, it is perhaps not surprising that recent research shows that simple conclusions with regard to the relationships between OHS and age are not possible.⁵⁵ As discussed below, it is necessary to consider the workplace context, influential factors and differential impacts and outcomes related to OHS for older workers. Numerous misconceptions have led to age discrimination in the workplace.⁵⁶ Although older workers are sometimes perceived as slower, less flexible, prone to illness and accidents, more resistant to change, and uninterested in training,⁵⁷ there is research evidence that contradicts these perceptions⁵⁸. Below, we discuss research findings with respect to work-related injury and illness issues related to older workers.

older workers
'older workers' have been
variously defined as 55 years of
age and over, between 50 and
80 years of age, and as 40-plus
years of age

- *Work-related injury.* Research findings with regard to the relationship between age and work-related injuries are inconsistent. On one hand, several studies have found no significant relationship between age and work-related injury.⁵⁹ On the other hand, complex relationships between age and work-related injury are suggested in research such as that by Ringenbach and Jacobs, who surveyed 209 workers in a nuclear power plant.⁶⁰ They found that older workers experienced more days off work related to injury than younger workers. While the older workers did not report having more injuries, they took more days to recover from injury than did younger workers. Australian statistics support the international findings; injury severity increases with age, requiring more time for recovery.⁶¹ James and Brownlea have shown, however, that the severity of impact experienced as a result of work-related injury is not entirely attributable to age.⁶² Severity of impact is influenced by a range of factors, including job security, organisational factors, gender role and the provision of various types of support (both instrumental and emotional).
- *Work-related illness.* Work-related illnesses are also a major OHS concern, as there are many and varied sources of occupational disease. While several illnesses are associated with age, an association between work-related illness and age is not clear. As was shown for injuries, job characteristics and the work environment should be considered in an analysis of factors related to work-related illness.⁶³
- *OHS outcomes and age: the case of absenteeism.* OHS issues are often related to outcomes such as absenteeism. There are, however, mixed findings in the research on age and absenteeism.⁶⁴ For example, Rhodes found that unavoidable absence among older male workers may be higher than among younger workers, perhaps due to longer recovery periods and health problems associated with age.⁶⁵ More recent meta-analytic research, however, has found that older men had fewer short-term absences (that is, less than three days) than did younger men.⁶⁶ It is interesting to note that this relationship was not found to apply to women. The large body of research on shiftwork has raised several important issues related to age and absenteeism, although there are few strong conclusions. On one hand, Härmä, Hakola and Laitinen found that older workers have greater difficulty in making adjustments to shiftwork.⁶⁷ On the other hand, Smith, Colligan and Tasto surveyed 660 shiftworkers in the US food processing industry and found that older workers with greater job tenure had fewer sick absences.⁶⁸ In their study, it appeared that younger, less-experienced males were the group most influenced by shiftwork in terms of absence.⁶⁹

Overall, this research appears to have two major implications. First, it should not be assumed that older workers are more prone than younger workers to injury or illness. Second, it should be recognised that a diverse workforce will have diverse OHS concerns and comprehensive management approaches are needed. Older workers may face OHS issues that are different from those relevant to younger workers. There is an increasing awareness of the need for comprehensive social policies and OHS management policies to assist older workers and to recognise older persons as valuable human resource assets. Organisations as well as employees suffer the effects of work-related injury and illness. If OHS is diminished due to the multitude of influential factors that have been identified in empirical research, neither the employee nor the organisation will benefit. Effective management of OHS requires attention to a range of factors, including general societal factors, organisational factors and individual characteristics. The following section discusses the development of OHS management systems; issues for older workers are highlighted with respect to the HRM strategies that can be implemented for OHS.

The management of occupational health and safety

There are several noteworthy trends in the management of OHS. These trends are found across a range of levels, from social reforms to organisation-specific management approaches. The legislative developments with regard to OHS highlight the need for organisational policies and programs that address the OHS needs of all employees.

OHS management should be an integral part of an organisation's strategic planning and management, and strategic planning specifically for OHS management is essential. OHS management presents an important challenge for all managers. As we have discussed, there are legal requirements for employers to ensure safe working conditions for employees. Further, there is substantial research and practical evidence to demonstrate that effective management of OHS has benefits for employees, managers and other stakeholders. Stakeholders in OHS management include not only governments, unions, employees, employers and industry associations, but also contractors, suppliers, workplace owners, shareholders, workplace visitors, customers and the general community.

A major trend in OHS management is the increase in attention to prevention, rather than compensation, of work-related injury and illness, for a number of reasons. First, some notable debates over occupational hazards, such as asbestos, have made it clear that preventive actions are essential for the management of OHS. Second, there is widespread acceptance that a system focused on compensation will not effectively reduce occupational ill-health. Third, there is an increase in worker participation and a widening of the definition of occupational health and safety to include all health problems of workers.⁷⁰

Organisational initiatives that seek to improve OHS management vary from simple legislative compliance to OHS management systems fully integrated with sophisticated human resource management strategies. Organisations differ in the extent to which they develop techniques, programs and activities to promote safety and prevent accidents. Also, the effectiveness of these techniques and programs varies with the type of industry and size of organisation. As illustrated in the 'Making safety fun' box on page 20, an increasing number of organisations are, however, implementing comprehensive, preventive OHS management systems as part of a strategic approach to human resource management.⁷¹

An **OHS management system** usually involves policy and programs that cover the planning, implementation, evaluation and improvement of OHS in an organisation. The **OHS policy** typically includes OHS goals for the organisation. The written OHS policy, approved by top management, is typically accompanied by a set of OHS programs, rules and instructions that identify OHS accountabilities and set out the ways in which OHS compliance will be met. Most Australian state and territory OHS laws include a provision for employers to prepare and revise, as often as necessary, a written statement of a general OHS policy for employees, and to make arrangements for carrying out that policy, and to bring the policy and any revisions to the notice of all persons employed in or on the workplace.⁷²

OHS programs, or plans designed for policy implementation, identify the OHS procedures, practices and people necessary to reach policy objectives.⁷³

Fundamental to the performance-based legislative approach and the development of OHS management systems is the management of risk. **Risk management** is a process of identifying all hazards in the work or workplace, followed by an assessment of the associated risks and the implementation of effective measures to control those risks. The steps involved in risk management are discussed in more detail with regard to the conduct of OHS audits.⁷⁴

Fundamental to an OHS management system is an organisational '**safety culture**' or '**safety climate**'.⁷⁵ Guldenmund has conducted a comprehensive review of the literature on safety culture and climate.⁷⁶ He reports that numerous definitions and models of each

OHS management system
organisational policy and programs that cover the planning, implementation, evaluation and improvement of OHS in an organisation

OHS policy
a written statement approved by top management, typically accompanied by a set of OHS programs, rules and instructions, that identifies OHS accountabilities and sets out the ways in which OHS compliance will be met

OHS program
a plan designed for policy implementation that identifies the OHS procedures, practices and people necessary to reach policy objectives

risk management
the process of identifying all hazards in the work or workplace, followed by an assessment of the associated risks and the implementation of effective measures to control those risks

safety culture
results from individual and group values, attitudes, perceptions, competencies and behaviours that determine commitment to, and the style and effectiveness of, an organisation's OHS management

safety climate
the attitudes, beliefs, perceptions and values that employers and employees share in relation to safety, and is a subset of culture

have been offered and the relationship between the two concepts has been debated and remains unclear. Similar to the concepts of general organisational culture and climate, the concepts of safety culture and climate have become 'almost interchangeable'.⁷⁷ However, it has been suggested that safety culture is more complex, encompassing basic assumptions, artefacts and espoused values about safety in the workplace, while a safety climate is a subset of culture, equating to the attitudes, behaviours and perceptions.⁷⁸

A definition of safety culture adopted by many researchers is:

*the product of individual and group values, attitudes, perceptions, competencies and patterns of behaviour that determine the commitment to, and the style and proficiency of, an organisation's health and safety management ... characterised by communications founded on mutual trust, shared perceptions of the importance of safety and by confidence in the efficacy of preventative measures.*⁷⁹

Safety cultures include awareness of factors such as:

- OHS practices and procedures
- management of risk
- work pressures
- communication of OHS issues at the workplace
- importance of OHS in training and performance appraisal
- management/supervisory attitudes about OHS
- safety of equipment and facilities
- management/supervisory actions in response to OHS issues
- employee understanding of OHS policies and procedures
- employee participation in activities related to OHS.⁸⁰

Elements of OHS management systems

Basic elements of an OHS management system can be categorised into three groups: organisation, responsibility, and accountability; consultative arrangements; and specific program elements.⁸¹

Organisation, responsibility, and accountability elements include the involvement of senior managers, line manager/supervisor responsibilities, all managers' accountability for OHS, performance management and the organisation's OHS policy.⁸² As with all areas of HRM, responsibility for OHS is shared among HR, executive, senior and line managers, and employees. Each group will have responsibility and accountability with regard to OHS, although the organisation of OHS responsibilities will vary between organisations. For example, larger organisations are more likely to have a dedicated OHS manager, reporting directly to senior management. An OHS manager's responsibilities may include:

- designing, evaluating and reviewing OHS policy and programs
- checking OHS legal compliance
- conducting or coordinating OHS audits
- providing advice to managers, supervisors and OHS representatives or committees
- communicating OHS information to all stakeholders
- overseeing OHS programs such as training and health promotion.

In many organisations, these activities will be the responsibility of the HR function.⁸³

Consultative arrangements include elements such as OHS representatives or committees and broad employee participation.⁸⁴ OHS laws require that workplace OHS representatives and committees should provide a link between top management and employees with regard to OHS matters. OHS representatives and committees, usually elected by employees, contribute by, for example, making recommendations to the employer about OHS

MAKING SAFETY FUN

When the staff at Kingston Council's three aged-care facilities turn up for work wearing red, everyone knows it is fire safety week. Linking workplace safety with fun has raised morale and reduced injuries among the hostel workers and their colleagues who provide domestic and personal care to people living in their own homes. It has also brought state-wide recognition. The council recently won the best risk-solution category in the Victorian WorkCover Authority's WorkSafe Victoria Awards for initiatives that reduced its WorkCover premiums from \$120 000 in 1999 to below \$10 000 last financial year.

Community services manager Carolyn McClean says the victory is not just a thrill for the council workers—it also marks an improvement in service to clients. 'The health-and-safety program minimises staff injuries and that means greater productivity', she says. 'If our carers are healthy and safe, they are better able to attend to the needs of frail, aged and disabled people and deliver a cost-effective service.'

Kingston operates residential complexes at Mentone, Mordialloc and Edithvale and provides home care and personal care services to about 4500 people throughout the municipality. Ms McClean says a strategic review of human resources policies and practices in 1999 raised concerns that occupational health and safety was not well managed, with inadequate staff training, reporting systems and infection controls. It revealed high levels of absenteeism and WorkCover claims and a lack of programs to help injured workers return to work.

A team approach was taken to solving the problems. Council management and workers included hostel residents, their relatives and clients receiving home-based services in their plans to improve occupational health and safety. Some programs directly targeted the health of clients. A hydration program was developed to increase the wellbeing of dementia sufferers and hostel residents during hot weather and a committee was established to work out ways of

reducing falls and fractures. Safety week programs were developed to encourage safety consciousness among all hostel residents, workers and volunteers.

The manager of Corben House at Mentone, Mary Fromberger, says the increased training received by staff has had a 'huge' impact on morale. 'There are fewer injuries, people have fewer aches and pains and back problems', she says. 'They are a lot happier. Things get

done differently. We have a lifting machine to lift people who fall and, when boxes have to be lifted, it is done by two staff members instead of one.' She says the training has made workers better able to identify possible safety hazards and more confident that they have management support to take the time they need to do things in a safe way.

Ms Fromberger says the idea of hostels manager Charmaine Waugh that safety should be fun has also been a hit. Four weeks of special programs run each year dedicated to raising awareness and understanding of fire and emergency evacuation responses, and

**COMPETING
AS AN EMPLOYER
OF CHOICE**

matters.⁸⁵ Consultation is a basic requirement for the effective management of OHS, as consultation should enable everyone in the workplace to play a role in ensuring healthy and safe workplaces.⁸⁶

Specific OHS program elements include:

- OHS rules and procedures
- training programs
- workplace inspections
- incident reporting and investigation
- statement of principles for hazard prevention and control
- data collection, analysis and record keeping
- OHS promotion and information provision
- emergency procedures
- medical and first aid facilities and procedures.⁸⁷

Occupational health and safety auditing

In addition to the basic elements of the OHS management system, an auditing process is an essential part of managing OHS. **Auditing** is a systematic examination against established criteria, conducted regularly, to identify deviations from the OHS management system, and to determine whether these can compromise health, safety and productivity. The information collected can be used to increase the effectiveness of the OHS

auditing

a systematic examination against established criteria, conducted regularly to identify deviations from the OHS management system and determine whether these can compromise health, safety and productivity

personal and general safety. The council's Safety Bug mascot attends special events and decorations in the hostel lounges and dining rooms emphasise the theme. 'It's been fantastic', says Ms Fromberger. 'Everyone gets excited.'

The review of occupational health and safety has also changed the way home care staff work. Sue Putt, one of Kingston's five home care coordinators, says efforts have been made to break down the traditional isolation of workers who provide domestic or personal care to elderly and disabled clients in their own homes. She began working with the council seven years ago as a domestic carer, doing housework for a number of clients, moving on to provide personal care to people needing assistance with showering and dressing, and then to office work. 'I suppose when I started, I thought of it as a little part-time job while the children were at school. I'm a living example that it can lead to a career', she says.

Boosting the confidence and self-esteem of carers is at the heart of many of the occupational health and safety initiatives. 'We encourage people to look after themselves. We keep our carers for a long time—some have been with us twenty years', says Ms Putt.

A buddy system operates for people making the move from domestic to personal care. Carers are trained by the Royal District Nursing Service and accompanied on their first assignments by a nurse from Central Bayside Community Health Services. All carers are encouraged to see themselves as part of a team. Regular meetings are held and office staff are always ready to offer a cup of tea to a carer who drops in for a visit. 'In the past they were isolated', Ms Putt says. 'I think a lot of carers just used to put up and shut up. Now they

have a lot of training. It has given them the power to say no if they are asked to do something they are not comfortable doing.'

The appointment of former carer Colin Hampson to a newly created position as occupational health and safety officer means coordinators and carers have someone who can provide on-the-spot assistance if a problem arises. Sometimes, says Ms Putt, this can be as simple as ensuring a client has a safe vacuum cleaner for a domestic carer to use and that environmentally friendly cleaning products are available. Sometimes it can also mean having someone available to reinforce messages about the tasks that carers can and cannot undertake.

'It can be difficult for clients to understand that their home is someone else's workplace', says Carolyn McClean. 'When you think that domestic carers are doing housework 25 hours a week, there are a lot of opportunities for accidents if they do things that are not safe.' Inevitably, she says, occasional injuries do still occur. 'But because we have reduced the number, we now have a high level of capacity to really support the individuals involved and find them alternative duties. It is rare that we have more than one injured worker at a time, so we can usually find work for them that is not just photocopying and filing.'

Source: Carolyn Rance, 'Safety training leaves aged-care workers healthier, happier', *The Age*, 27 July 2002, p. 32. Reproduced by permission.

Search for more on **Occupational Health and Safety** on PowerWeb, available at the Online Learning Centre at www.mcgraw-hill.com/au/decieri. (For access to Power-Web, please refer to the front of this text.)



management system.⁸⁸ The general duties section of each state and territory's OHS laws require employers to provide safe work places. While OHS audits may not be explicitly required, there may be requirements to monitor, review and inspect OHS, and regular audits are an effective way of meeting these requirements.

The elements of an OHS management system can be monitored and reviewed through the following several steps, which are commonly taken to provide an auditing process.⁸⁹

- 1 **Identification of standards.** Performance standards, or acceptable targets, need to be determined. These targets may include health and safety, budgetary, and production goals.
- 2 **Allocation of resources.** Appropriate resource allocation is required to ensure it will be possible to meet the targets. Resources may include financial, human and physical resources.
- 3 **Identification and communication of job hazards.** Using comprehensive OHS data collection, the identification and communication of job hazards is essential. Hazards are circumstances, procedures or environments that expose individuals to possible injury, illness, damage or loss.

Employees, supervisors and other knowledgeable sources need to sit down and discuss potential hazards related to safety. The job hazard analysis technique is one means of accomplishing this.⁹⁰ With this technique, each job is broken down into basic elements and each of these is rated for its potential for harm or injury. If there is

risk
the potential outcome of injury,
illness, damage or loss resulting
from a hazard

consensus that some job element has high hazard potential, this element is isolated and potential technological or behavioural changes are considered.

Communication of hazards and associated **risks**, which are defined as the potential outcome of injury, illness, damage or loss resulting from a hazard, should take advantage of several media. Direct verbal supervisory contact is important for its saliency and immediacy. Regular staff information sessions can be very helpful in communicating OHS information. Written memos are important because they help establish a 'paper trail' that can later document a history of concern regarding the job hazard. Posters, especially those placed near the hazard, serve as a constant reminder, reinforcing other messages. However, it may be necessary to update and change posters regularly; otherwise employees may ignore the 'old' posters.

- 4 *Hazard evaluation and implementation of OHS programs.* Based on the data collected, the severity, risk and costs of OHS hazards and problems can be evaluated and OHS programs set up to inspect and monitor, control, and eliminate hazards. These programs can then be formulated and implemented, and objectives regarding prevention of hazards may be established.⁹¹

The extent to which such risk management efforts will actually help to improve OHS depends on the degree of employee acceptance and correct use. If employees are involved in decisions to improve the safety of the work environment, they are more likely to accept the decision. In particular, increased worker participation and widening of the definition of OHS to include all health problems of workers play an important role in preventive OHS.⁹²

- 5 *Analysis and evaluation of results.* The progress of programs should be monitored and evaluated against stated goals and objectives. Rigorous evaluation measures should be applied to OHS programs. Commonly used OHS measures are lost time injury frequency rate (LTIFR), incidents reported (classified by type and severity), near misses (classified by type and potential severity) and cost of accidents. Effectiveness of OHS management strategies may be measured by several indicators such as job performance, workers compensation claims, absenteeism and turnover data, cost-effectiveness and productivity data.⁹³ Less easy to measure are psychological indicators of OHS, such as job satisfaction and job involvement. It is important to ensure that measures are reliable and valid. (See Chapter 16, Evaluating and improving the human resource function, for more discussion of the measurement and evaluation of HR activities.)

Performance assessment against OHS standards is required to ensure individual accountability. In other words, OHS behaviours may be a specific part of an individual's performance appraisal process (see Chapter 11, Employee development and career management). A system for objectively assessing improvements and giving positive feedback for correct safety procedures and behaviours needs to be established.

- 6 *OHS program and workplace improvement.* Implementation of safer and healthier working conditions and practices, with use of predictive knowledge to promote OHS in the future, is required. An ongoing process of improvement and evaluation will be beneficial to the organisation and employees.⁹⁴ The audit cycle should be completed by preparing an audit report, including identification of any corrective actions required, such as revision of existing policies and programs. OHS audit reports can be used by line managers as a basis for OHS planning and improvement, and by senior management to confirm that OHS management systems are operating and are regularly reviewed.⁹⁵

There are three main types of OHS audit types: a full-scale 'overview' audit of an operation's OHS management and technical systems; a more focused 'workplace' audit of a specific unit or work area; or a 'procedures' audit to examine a particular workplace hazard and related work practices.⁹⁶

Several auditing tools are available from various OHS authorities and professional organisations. For example, SafetyMAP (Safety Management Achievement Program) is an OHS management system audit tool developed by the Victorian WorkCover Authority.⁹⁷ The National Safety Council of Australia uses a Five-star Health and Safety Management System, which is a quality system approach to OHS management. It includes a comprehensive manual and audit standard, including more than 1200 audit criteria, and is available as a computer-based system.⁹⁸ The National Safety Council of Australia also conducts an annual national OHS awards program, which recognises people and organisations integrating excellent OHS practices into their mainstream operations.

Human resource management strategies for occupational health and safety

An OHS management system can and should be supported through a wide range of HR strategies, as shown in the following examples. These examples also highlight the OHS implications for an ageing workforce.

Structural strategies

Organisational restructuring in many organisations involves increased use of teams and project-based work arrangements; these changes have implications for OHS and the development of a safety culture. The importance of safety *subcultures* and safety behaviours among work teams has been identified in several empirical studies.⁹⁹ The implementation of teams often, although not always, involves employee empowerment, a redistribution of power with organisational de-layering and devolution of decision making from managers or supervisors to employees. Empowerment is usually undertaken not as a safety initiative, but as a means towards the achievement of organisational effectiveness, productivity, cost reduction and customer satisfaction.¹⁰⁰ Critics of empowerment have suggested that it places more stress on employees and may even disrupt traditional career-paths.¹⁰¹ Hechanova-Alampay and Beehr found that empowerment of employees and an increased span of control were significantly correlated to unsafe behaviours and incidents.¹⁰² These authors suggest, therefore, that the implementation of teams requires consideration of both the competencies of employees and the capacity of managers or supervisors to lead the restructured workgroup. It should also be noted that work teams can sometimes be disempowering for employees, by reducing an individual's decision-making involvement. The development and maintenance of work teams with a positive safety subculture and behaviours may require attention to specific OHS strategies such as training and supervisory responsibilities.¹⁰³

Consideration of OHS with regard to organisational changes such as restructuring strategies, and consultation with workers about such changes, will benefit the organisation and the employee.

Job design

One aspect of altering the work environment to improve OHS is to design the job to be more comfortable and less fatiguing, by taking into consideration the physical, physiological and psychosocial aspects of work. A mismatch between the physical capabilities of employees and the physical demands of jobs can lead to work-related injuries and illness, particularly stress-related illness. Person-job match also applies to the tools required to perform the tasks.¹⁰⁴

For example, several authors have offered recommendations with regard to older workers and job design. Older workers, such as those in managerial and administrative roles, may be experienced and reliable workers, but may also have quite high expectations with regard to flexibility of work schedules, salary levels, meaningful jobs and continuous learning.¹⁰⁵ Workplace changes such as organisational restructuring may lead to job design concerns: jobs involving experience, knowledge and accuracy may be more appropriate for older workers than jobs requiring speed. While speed in motor skills may decline, older workers can compensate through their experience and knowledge.¹⁰⁶

With the increase of knowledge-based work and service industries, there is growth in jobs, particularly part-time work, that are not physically demanding. In a study of older workers who had begun new, mostly part-time jobs, Eichar, Norland, Brady and Fortinsky¹⁰⁷ noted that the growing number of part-time jobs are relatively low-skilled, and 'to the extent that older workers in new jobs are influenced most by intrinsically rewarding work, there appears to be a growing mismatch between an occupational niche and those who are being sought to fill it'.¹⁰⁸

Older workers may compensate for lower physical fitness by having a higher level of safety awareness in the workplace and using appropriately designed tools. Research shows that older workers can perform very effectively with appropriate person-job match and training.¹⁰⁹ Further, OHS policies and practices that are supportive of older workers can influence workers' beliefs about their self-efficacy, in turn affecting their performance.

Health promotion, training and development programs

OHS training and development for managers and supervisors should encourage these organisational leaders to develop and maintain concern and commitment to OHS, effective communication about OHS and involvement of employees in OHS. Managerial attitudes and behaviours are an important factor in safety culture and will influence employees' safety attitudes and behaviours.¹¹⁰ Research has found that safety training increases workers' knowledge and awareness of OHS issues and reduces injuries.¹¹¹

A major area of OHS management focuses on health promotion and training programs. Employee health-promotion programs are defined as: 'ongoing organisational activities designed to promote the adoption of personal behaviours conducive to maintaining and/or improving employee health'.¹¹² OHS training and development for employees may include specific communication about their current job tasks and broader organisational OHS issues. **Safety awareness programs** and training programs, along with employee fitness programs, encourage both fitness and safety orientation, and lead to a reduction of work-related injury and illness.¹¹³

For example, in the Australian mining industry, OHS has been a major concern, largely driven by the trade unions. A substantial amount of research, development and organisational reforms have been conducted across the mining industry with regard to roster design, managing fatigue, employee fitness for work, personal wellbeing, lifestyle and sleep management, work and job design, accommodation and facilities (especially in remote locations), and employee assistance programs.¹¹⁴ However, several commentators have doubted claims of OHS performance improvements in this industry over the past decade. It has been suggested that as the mining industry utilises contractors to a great extent, OHS incidents reported for contractors need to be considered, in addition to those for the mining corporations themselves.

Focusing on the OHS needs of an ageing workforce, it is important to recognise that managing OHS of older workers requires attention to their training and development needs. Paul and Townsend emphasise the need to ensure that employees of all age groups continuously improve their skills in order to work most effectively.¹¹⁵ The experience and motivation of older workers should be reinforced and encouraged, through provision of

safety awareness programs
employer programs that attempt
to instil symbolic and substantive
changes in the organisation's
emphasis on safety

training and learning opportunities, to enhance their adaptation to new technology and new forms of work organisation.¹¹⁶ Friedman argues that 'finding and obtaining work will remain a difficult challenge for many older workers, but, with an effective training system targeted to meeting their needs, the difficulties can become more manageable'.¹¹⁷ Conversely, he points out that older workers who are more flexible and willing to acquire new skills are those more likely to find employment. Across Australia, increased demand for skilled and experienced labour has positive implications for older workers¹¹⁸ and organisations facing labour shortages are more likely to have management policies that accommodate older workers, such as targeted training programs and placement of older workers in special activities¹¹⁹.

Diversity management

There is an increasing awareness of the need for comprehensive diversity management strategies related to OHS. For example, as organisations restructure, the contingent workforce is increasing, with more workers employed in non-traditional work arrangements, such as short-term, temporary or fixed-term contracts. For contingent workers, there are particular implications with regard to OHS; precarious employment has been associated with poor safety records. The temporary nature of contingent work may provide few opportunities to develop the working relationships and understanding necessary for the contingent worker to share in the safety culture of the organisation. Strategies to encourage the positive involvement of contingent workers in a safety culture may include: teamwork that encourages and enhances safety awareness and behaviours; supervisory attitudes and actions so that contingent workers are well-informed about OHS; and training to develop safety behaviours.¹²⁰ Alternative reward and motivation strategies may be appropriate for contingent workers, such as 'promoting safety as a professional value ... rather than assuming that contingent workers will internalise company safety goals'.¹²¹

Reward management

Reward strategies are also important in the management of OHS. Reward and recognition strategies may include recognition by peers, financial rewards and consultation by management (that is, involvement in decision making).

Reward strategies may also be integrated with strategies to improve the OHS of older workers. Paul and Townsend present a range of reward strategies for managing the OHS of older workers.¹²² These include reviewing current HRM policies to accommodate older workers, using flexible benefits and rewarding employees for continuous learning and long tenure.

Overall, these HRM strategies and practices apply equally well to efforts to improve physical, physiological or psychosocial aspects of OHS, and they are likely to be most effective when combined in an integrated approach to OHS and HRM.¹²³ For example, psychosocial factors related to OHS include the need for flexible OHS programs including stress counselling. Occupational stress and psychosocial issues may also be addressed through job redesign, involvement of employees in decision making, training opportunities, appropriate pay systems, and effective supervision and leadership.

Occupational health and safety and small business

We have discussed a range of OHS strategies that may be applicable in many organisations; however, as Mayhew and others have detailed in a stream of research, it is important to recognise that small businesses have particular OHS concerns.¹²⁴ It is evident that there are

significant differences between small and large organisations, relating not only to size but to various factors. First, economic and financial instability in small businesses may lead to work pressures and work intensification. Second, small businesses tend to have less access to OHS resources, knowledge and expertise. Third, managerial attitudes and practices differ between large and small business. For example, managers in small business tend to prefer face-to-face communication and less formal systems of control. Fourth, many regulations tend to be designed for large workplaces with permanent employees and may not be appropriate for small business. Such differences have important implications for the management of OHS.¹²⁵

There is increasing evidence that employees in small business have a higher risk of fatality, permanent disability, and temporary disability and illness than employees in larger organisations. For example, outworkers in the clothing manufacturing industry have been found to have an injury incidence rate approximately three times that of factory workers, although these injuries rarely result in workers compensation claims and/or prevention (or treatment) actions.¹²⁶ Further, Mayhew reports that there is preliminary evidence of increasing incidence of workplace violence in small business. For example, small retail businesses are at increasing risk of violent hold-ups.¹²⁷ It is important to consider the OHS needs of small business, as an increasing proportion of the Australian workforce is employed in these organisations (also see Chapter 1, Human resource management in Australia).

There are some characteristics of small business owners that Mayhew suggests have implications for the way in which OHS should be managed in these organisations.¹²⁸ For example, small business owners tend to work long hours: according to the Australian Bureau of Statistics, 44 per cent work between 35 and 50 hours per week, 23 per cent between 52 and 75 hours, and even 5 per cent work more than 75 hours per week. Also, small business owners tend to be older than the general workforce: 62 per cent aged between 30 and 50 years of age; 34 per cent aged 50 years or older.¹²⁹ It is also interesting to note that a substantial proportion of small businesses are owned by migrants, with at least 30 per cent born outside Australia.¹³⁰

The differences related to organisational size can be dealt with at several levels, from the broad legislative level to the individual level. For example, OHS legislation may be introduced on an incremental basis to allow small business owners time to establish required procedures. When the *Occupational Health and Safety Act 2000* (NSW) was introduced in 2001, medium and large businesses were allowed one year, and small businesses were allowed two years, to establish the required risk management and consultation procedures. Hence, since 1 September 2003, small businesses in New South Wales have been required to comply with all aspects of this Act, including risk management and consultation provisions of the Act. In addition to such legislative considerations, several strategies at organisational and individual levels have been suggested to improve OHS in small business. Research has shown that mail campaigns are largely ineffective; small business owners and managers prefer face-to-face communication, particularly from peers (not government officials) and industry groups.¹³¹ Cowley, Else and LaMontagne have suggested that social marketing, a tool borrowed from the public health discipline, may be useful to improve OHS risk management, particularly for small business.¹³² **Social marketing** refers to the use of commercial marketing strategies to promote behavioural change that will improve the health or wellbeing of the target group, such as a workforce, or of society in general.¹³³ On-site visits by an OHS inspector have only a short-term effect, although the development of an ongoing relationship with the inspectorate, in addition to the involvement of an industry association, can have a significant positive outcome.¹³⁴ Mayhew suggests that OHS clauses should be included in contracts for small businesses, trade educational courses for small business should include

social marketing
the use of commercial marketing
strategies to promote behavioural
change that will improve the
health or wellbeing of the target
group, such as a workforce, or of
society in general

OHS information, and industry guidance needs to be provided.¹³⁵ Overall, a comprehensive program is advised. For example, in 2003, the Victorian Government provided a step-by-step guide to managing OHS for small-to-medium workplaces (available in CD-ROM or booklet). This guide, promoted as part of a \$1 million advertising campaign to improve OHS, was part of WorkSafe Victoria's program to improve OHS in small and medium businesses. The impact of this program remains to be evaluated.¹³⁶

Occupational health and safety in the Asia-Pacific region

Work-related illnesses and injuries are in need of attention across diverse workforces, across organisations of various sizes and types, and across industries, not only in Australia but throughout the Asia-Pacific region.¹³⁷ It has been argued that, as an economically advanced country in the Asia-Pacific region, with well-developed approaches to OHS, Australia is able to help regional countries improve their OHS practice.¹³⁸ In the 1990s, the Australian Government and the NOHSC adopted a strategy and coordination framework to guide Australian OHS activities in the Asia-Pacific region. This strategy involves:

- promotion of a compatible legislative and philosophical framework
- promotion of harmonised standards and technical approaches
- development of relationships between key government and non-government OHS institutions in Australia and Asia-Pacific nations
- facilitation of quality education, training and professional development opportunities
- promotion of Australian commercial and service activities to Asia-Pacific countries
- development of strategic OHS programs in specific nations
- revision of Australia's role with international agencies to complement regional activities
- enhancement of Australian domestic arrangements to ensure an effective OHS role throughout the Asia-Pacific region.¹³⁹

Estimates provided by the United Nations indicate that two-thirds of the world's population growth over the next few decades will be in Asia. If current trends continue, India and the People's Republic of China will account for 70 per cent of urban growth in Asia.¹⁴⁰ Industrialising nations in the Asia-Pacific region are encountering complex challenges with implications for HRM and OHS. The experience of Australian OHS legislation and practice has been suggested to provide useful examples for neighbouring nations.¹⁴¹

Developments in Asia-Pacific OHS legislation and social policy have been manifest over the past two decades. For example, the 1994 Labour Law in the People's Republic of China includes OHS as a priority area for attention and improvement.¹⁴² Several Asia-Pacific nations have used the Australian OHS legislation as a guide for developing their own legislative approaches. For example, Australian Government advisors have provided assistance for the development of OHS legislation in Fiji. This project proved the basis for subsequent development of other OHS activities in which Australia has advised Fiji, although there remain a number of areas for improvement, such as utilisation of worksite inspections. The Malaysian Occupational Safety and Health Act 1994 was also influenced by Australian legislation. Operating in combination with the provisions of this Act is a system of regulations and approved industry codes of practice designed to maintain or improve the standards of safety and health.

Government plays a role in OHS, not only through legislative processes but also through the development of national standards and enforcement processes. Gunningham discusses

the design of national OHS standards, evaluating the options of specifications, performance standards and regulatory system-based standards, recommending that these may be used in combination, in order to achieve 'best practice' in OHS management.¹⁴³ However, all regulatory requirements should be evaluated in terms of their effectiveness in achieving social objectives.¹⁴⁴ Performance-based regulation in OHS has been emphasised in regulatory reform in Australia and Malaysia.¹⁴⁵

There are inevitable dangers in this legislative approach. It has been suggested that any benefits of the self-regulatory emphasis in this OHS legislation may be offset if labour laws are altered in ways that weaken trade unions and inhibit collective bargaining.¹⁴⁶ One criticism of this legislative approach being transferred throughout the region is that there is evidence of weak enforcement of OHS laws in several Asia-Pacific nations.¹⁴⁷ For example, China's labour law establishes an 8-hour workday and a 44-hour work week. Despite this legislation, several studies have reported much higher work hours (averaging 69 hours per week) in China's garment industry, in uncomfortable and unsafe environments. Safety hazards include lack of ventilation and exposure to chemicals without protective clothing or safety devices.¹⁴⁸ There are, however, some interesting developments. For example, Chen and Chan found that the input of the trade union and workers' representative congress in Chinese factories had a significant, positive impact on the protection of OHS.¹⁴⁹

Given the increasing focus on international management (discussed in Chapter 14, Managing a global workforce), organisations need to consider how to best ensure the safety of workers regardless of the nation in which they operate. Cultural differences may make this more difficult than it seems. For example, a recent study examined the impact of one standardised corporation-wide safety policy on employees in three different countries: the United States, France and Argentina. The results of this study indicated that the same policy was interpreted differently because of cultural differences. The individualistic, control-oriented culture of the United States stressed the role of top management in ensuring safety in a top-down fashion. However, this policy failed to work in Argentina, where the collectivist culture made employees feel that safety was everyone's joint concern; therefore, programs needed to be defined from the bottom up.¹⁵⁰

Evaluating occupational health and safety strategies

OHS strategies or practices need to be carefully considered before being selected and implemented. Consultation with OHS experts and resources are recommended ways of gaining information about particular programs. The effectiveness of OHS management and improvement strategies may be measured by several indicators, as discussed earlier with regard to OHS audits. The components of an OHS program should be integrated with the overall organisational policy, to achieve maximum awareness of and improvement in OHS. A comprehensive OHS management system should seek to ensure that the work environment is safe, and that employees are cared for in the event of injury or illness.¹⁵¹

Chapter summary

One of HRM's major challenges is to perform its function within the legal constraints imposed by the government. HR and line managers need a good understanding of the legal requirements in order to manage their businesses in ways that are safe. Organisations that do so effectively will definitely have a competitive advantage, particularly in dealing with significant developments such as the ageing of the workforce.

Significant progress has been made with regard to OHS management systems and auditing. The components of an OHS management system should be integrated with

organisational policies overall, to achieve maximum awareness of and commitment to improvement in OHS. HRM activities such as OHS will continue to be an important concern for organisations and governments in Australia and the Asia–Pacific region.

- A** For the latest information about the Australian OHS legislation, the National Library of Australia's web site has a section on 'Australian law on the Internet' at <http://www.nla.gov.au/oz/law.html>. Go to this web site to discover more information about the law in Australia.
- B** For the latest information about Australian OHS such as the national strategy, OHS standards and statistics, including the *National OHS Strategy 2002–2012* and the *Compendium of Workers' Compensation Statistics Australia*, visit <http://www.nohsc.gov.au>.
- C** For information about OHS for small and medium organisations, visit the NOHSC web site at <http://www.nohsc.gov.au/SmallBusiness/OHSStatistics/SBMW5.htm>.
- D** For information about OHS and workers compensation at state level, visit one of the following state government web sites:
- Victorian Government web site for OHS: <http://www.worksafe.vic.gov.au>
 - WorkCover Queensland web site: <http://www.workcover.qld.gov.au>
 - WorkCover Western Australia web site: <http://www.workcover.wa.gov.au>.
- E** Visit the web site of the Asia Pacific Occupational Safety & Health Organization at <http://www.aposho.org>. The objective of APOSHO is to promote mutual understanding and cooperation among communities in the Asia–Pacific region and to contribute to the enhancement of OHS in these communities through the exchange of information and views.
- F** Visit the web site of the International Commission on Occupational Health (ICOH) at <http://www.icoh.org.sg>. ICOH is an international non-governmental professional society whose aims are to foster the scientific progress, knowledge and development of OHS.
- G** The Centre for Sleep Research at the University of South Australia provides a range of research, teaching and consultancy services related to issues such as fatigue, shiftwork and OHS. Visit their web site at <http://www.unisa.edu.au/sleep>.

- 1 What are the main features of OHS legislation in your location?
- 2 Identify some of the current OHS issues in the Asia Pacific region.
- 3 What are the major OHS problems and challenges related to employee fatigue?

- 1 Many have suggested that OHS penalties are too weak and misdirected (that is, aimed at employers rather than employees) to have any significant impact on employee health and safety. Consider the OHS legislation for your state or territory. Do you think that OHS-related sanctions need to be strengthened or are existing penalties sufficient? Defend your answer.
- 2 What are some of the implications of the ageing workforce for the management of OHS?
- 3 Suppose you were asked to design an OHS management strategy for an organisation. Identify the basic steps you would take, the important factors to be considered and the elements to be included.
- 4 Why are OHS concerns for small businesses different from those for large organisations?



Web
exercises



Web
exercise
questions



Discussion
questions



managing people

DEATH IN THE WORKPLACE

New industrial manslaughter laws in the ACT have revived the debate over who should be held responsible for deaths in the workplace.

Gary Brack (Executive director of Employers First)

OHS law in Australia is drafted and interpreted more harshly than most other places across the globe. This is a cultural response from our politicians and bureaucrats, and not reflective of a poorer standard of OHS. Australia has witnessed the same relative decreases in fatality and injury rates over the last three or more decades as have occurred elsewhere in the developed world.

The principal thing that differs here is ideology. The broad proposition argued here by unions and the academic left is that employers should be absolutely responsible for delivering perfectly safe workplaces and that any breach of this duty should be punishable by significant penalties, including substantial jail terms. These notions are being adopted by politicians and incorporated into law.

Nowhere is this more apparent than in NSW, which has some of the highest monetary penalties in the world, and a large number of OHS prosecutions and statutory employer responsibilities—all of which bring shrieks of disbelief from overseas regulators at international conferences. In NSW employers must guarantee virtually perfect safety; they must ensure their workplaces are free of risks.

Conceptually, that's a wonderful thing to aspire to, but 'on the ground' achieving perfection has proven not to be possible even for the major corporations who invest massively in sophisticated OHS management systems. Their approach is impressive and genuine, but in Australia it is not enough to do all things that should be done, without achieving actual perfection. And the vast majority of smaller employers simply don't have the resources to even approximate these standards.

Into this environment we now inject 'industrial manslaughter', a criminal offence which, if it follows union and academic left demands, will deem directors and managers guilty in the event of a workplace fatality, reverse the onus of proof, kiss goodbye to the presumption of innocence and leave hapless employers vainly trying to prove their own innocence.

In NSW, the left seems satisfied that it has finally overcome the major stumbling block to its ideological position, namely, how to deem the bosses guilty, but leave everyone else down the line beyond the reach of the law. And the answer seems simple enough—absolute liability, perfectly safe workplaces and a criminal offence of 'breach of duty causing death'. Hey presto, every fatality will reveal some failure to achieve perfection which represents a breach of duty. Hence, every employer will then be guilty ... but who will want to invest here then? It's a double victory for the left.

Katy Gallagher (Minister for Industrial Relations in the ACT)

When people go to work in the morning, loved ones and family members have a right to expect that they will return home safe. Unfortunately in Australia today there are far too many workplace accidents, and far too many accidents which result in death. Some workplace deaths are a result of freak accidents or are a result of working in inherently dangerous professions. The sad reality is that many are avoidable, and occur because those with responsibilities for safe workplaces ignore their obligations and remain wilfully negligent. That is why the ACT has prioritised workplace safety as an issue and, as part of a review of laws in the area, has implemented a criminal sanction of industrial manslaughter.

The ACT is the first jurisdiction in the country to create the crime of industrial manslaughter. This law now ensures that large corporations and ACT employers are on an even footing regarding their potential liability where a person is killed at work. Underlying the rationale for the law is an understanding that OHS law has proved deficient in giving families legal remedies against corporations and government employers where a loved one dies through the recklessness or negligence of an employer. People hiding behind the 'corporate veil' have avoided liability for unsafe workplaces. It is the belief of the ACT Government that, no matter how large or small an employer, if management or executive levels of a corporation are so reckless and negligent in failing to provide safe workplaces, then a legal sanction of this sort is appropriate.

It should be stressed that this law does not impose any new obligations on employers in the ACT. It is a new

sanction which applies specifically in the circumstances of workplace death.

Employers who adhere to their responsibilities under the OHS Act have nothing to fear from this legislation.

The new law is about protecting workers and it is about sending a strong message to our community that, here in the ACT, avoidable workplace deaths are dealt with in the strongest possible way. Families and friends of those who have died in avoidable workplace accidents have contacted me in the course of the formulation of this law.

Their loss must be a continuing reference point for the community in discussing the implications of these developments in the regulation of OHS.

Source: Paul Somerville, 'Legal overload or compelling message?', *HRMonthly*, April 2004, p. 13. HR Monthly is published for the Australian Human Resources Institute, <<http://www.ahri.com.au>>.

Question

1 Who should be held responsible for deaths in the workplace?

LEGAL LESSONS

There could have been few more humbling moments in the career of Esso chairman Robert Olsen than those that followed the verdict of a Supreme Court jury in July 2001. The jury found Esso guilty of eleven breaches of the *Occupational Health and Safety Act* relating to the 25 September 1998 explosion at its number one gas plant at Longford, near Sale. Two men died in the explosion and eight were injured. The company had pleaded not guilty to the charges. Mr Olsen said after the ruling that the accident marked a low point in Esso's history of operating in Australia and, while this is undoubtedly true, the jury's finding had ramifications that extended far beyond that single company's local activities. The fact is that under the relevant legislation the heaviest penalty the company could face is \$2.75 million or \$250 000 for each individual breach. This is a substantial sum but, for a company like Esso, a massive global operation, finding that sort of money is more a nuisance than a profound burden.

That is why the Victorian Government's stalled plan for new industrial safety legislation must be revived—and with haste. The Bracks Government had promised to introduce laws that provided for stiffer penalties and created the new offence of industrial manslaughter in the Spring session of parliament in 2000. But employer groups have expressed doubts and concerns about the legislation, claiming that there were flaws in the way it had been drafted. However, the legal aftermath of the Longford tragedy is a reminder—or perhaps even a wake-up call—that the current OHS laws do not appear to accurately reflect community sentiment on this issue.

The proposed laws would increase fines for individual offences to \$600 000 or \$750 000 depending on the specific type of indictable offence. The corporate manslaughter charge would carry a fine of \$5 million. These penalties seem more in keeping with contemporary society's view of corporate responsibility in the workplace than the current laws. While there could be some weight to employers'

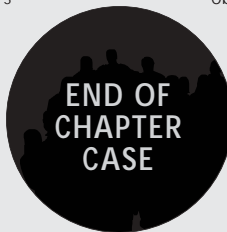
concerns about the details of the government's original proposals, it is incumbent on the government and the employer groups to get together, iron out their differences and expedite the bill.

And the State Opposition should take heed of community sentiment and look favourably at enabling a decent, more stringent set of OHS laws to pass through the upper house, where they have a majority. Industrial safety laws should, of course, contain a degree of flexibility and acknowledgment of the real world. But the Longford explosion showed what could happen when plant safety was

obscured in company 'blind spots'. The lessons are there to be learnt, and enshrined in legislation.

In July 2001, Justice Cummins, in the Supreme Court of Victoria, fined Esso \$2 million in total (see Table B). In December 2001, Justice Cummins awarded \$1.025 million compensation for pain and suffering to families and victims of the Esso explosion. In June 2003, \$1.11 million compensation was awarded in a class action to businesses for damages resulting from the disruption to gas supply. Justice Cummins awarded another \$1.37 million in June 2004. Payouts were given mainly for anxiety disorders, including post-traumatic stress disorder. Of these payouts, the largest individual payouts of \$150 000 went to a senior operations adviser, and a senior secretary. Their spouses were awarded \$20 000 and \$25 000 respectively. Justice Cummins said he was impressed by the character, dignity and honesty of the compensation applicants. 'All of them are a credit to themselves, a credit to their community and a credit to Esso Australia as an employer', he said. Justice Cummins said it had taken some time for many symptoms to stabilise or even manifest themselves. 'A number of applicants bravely refused to accept the reality of their symptoms for a considerable time, determining to overcome them by strength of will and of personal determination', he said. 'Unfortunately, such commendable determination had not

(continued)



proved to be efficacious.' Other cases were settled on confidential terms. In a separate civil action, two companies received \$1.1 million for damages caused by the explosion.

In October 2003, the teenage children of a man Esso tried to blame for the huge Longford gas explosion in 1998 were awarded compensation of \$100 000 each after the Supreme Court found they had suffered psychological injury. The payouts to the children of plant worker Jim Ward brought to almost \$2.4 million the total Esso has been publicly ordered to pay in criminal compensation to families affected by the blast. Justice Cummins said Esso had told a royal commission that Mr Ward, a control room operator on the day of the explosion, had failed to initiate action to address a failure at the plant. 'It is obvious, and it was always obvious, that Mr James Ward did not contribute in any way to the rupture, explosions and inferno that occurred at Esso Australia's Longford plant on September 25, 1998', he said. 'On the contrary, at all times, he acted properly, responsibly and, indeed, bravely.'

Source: Adapted from 'The lessons of the Esso judgment', *The Age*, 2 July 2001, p. 14; Peter Gregory, 'Esso to pay \$1.3m to staff, families', *The Age*, 24 June 2003, p. 5; and Peter Gregory, 'Esso plant worker's children awarded \$200 000', *The Age*, 1 October 2003, p. 2.

END OF CHAPTER CASE QUESTIONS

- 1 This case has received a lot of media attention. Search Australian newspapers for any recent articles following up on it. For a comprehensive analysis of this case, see A. Hopkins, 'Lessons from Longford: the trial', *Journal of Occupational Health and Safety—Australia and New Zealand*, 18 (6), 2002, pp. 5–67.
- 2 What do you think are the major lessons for HR practitioners to learn from this case?
- 3 How might a strategic approach to HRM help prevent such tragedies in future?
- 4 Do you think that payment of fines is a suitable legal penalty in such cases?

Table B Penalties imposed on Esso by the Supreme Court of Victoria, 30 July 2001

No.	Count	Fine (A\$)
1	Inadequate hazard identification	250 000
	Further penalty	50 000
2	Failure to conduct an adequate risk assessment	150 000
3	Failure to maintain plant in a safe condition	200 000
	Further penalty	50 000
4	Inadequate procedures to deal with loss of warm oil circulation	100 000
5	Failure to adequately train employees to respond to a loss of warm oil	100 000
6	Failure to provide the means for ensuring that items of plant operated at a safe temperature	100 000
7	Failure to adequately train employees regarding the risks associated with abnormally cold plant	250 000
	Further penalty	50 000
8	Failure to adequately train supervisors regarding the risks associated with abnormally cold plant	150 000
	Further penalty	50 000
9	Failure to monitor conditions	200 000
10	Failure to ensure that heat exchanger was protected from thermal shock	100 000
11	Failure to ensure the safety of persons other than employees	200 000
	Total	2 000 000

Source: Andrew Hopkins, 'Lessons from Longford: the trial', *Journal of Occupational Health and Safety—Australia and New Zealand*, 18 (6), 2002, p. 34.) Reproduced with kind permission CCH Australia Limited. For more information see <<http://www.cch.com.au/>>.

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