PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW & JUSTICE

FINAL REPORT OF THE INQUIRY INTO

WORKPLACE SAFETY

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Contact Details

Members of the Standing Committee on Law and Justice can be contacted through the Committee Secretariat. Written correspondence and telephone enquiries should be directed to:

Terms of Reference

That the Standing Committee on Law and Justice inquire into and report on workplace safety matters, with particular reference to:

(a)   integrating management systems and risk management approaches aimed at reducing death and injury in the workplace;

(b)   social and economic costs to the community of death and injury in the workplace; and

(c)   the development of an appropriate legislative framework for regulatory reform and/or codes of practice in relation to occupational, health and safety in the workplace.[1]

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[1]   Minutes of Proceedings of the Legislative Council, 26 June 1996, p 284.

Committee Membership

The Hon Bryan Vaughan, MLC, Australian Labor Party
Chairman

The Hon John Ryan MLC, Liberal Party
Deputy Chair

The Hon Janice Burnswoods, MLC, Australian Labor Party

Reverend the Hon Fred Nile, MLC, Christian Democratic Party

The Hon Peter Primrose, MLC, Australian Labor Party

The Hon Janelle Saffin, MLC, Australian Labor Party

The Hon Max Willis MLC, Liberal Party[2]

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[2] Replaced the Hon Helen Sham-Ho MLC, 6/7/98.

Committee Membership

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Chairman's Foreword

Twenty-six years ago, when Lord Robens (of the United Kingdom) produced his report on *Safety and Health at Work*[3], which has become the basis for the regulation of workplace safety in the United Kingdom, all Australian States and Territories and much of the common law world, the world of work was vastly different to what it is today. Even in the last 15 years since the enactment of the NSW *Occupational Health and Safety Act* there have been profound changes in the nature of work and industrial relations.

Changes in the labour market, the decline in manufacturing, the rise of service industries, "downsizing", the growth in small business, declining membership of trade unions, the shift to temporary and part-time work, changes to working hours and shiftwork, and the growth in outsourcing and subcontracting are just a few of the more significant changes. And each of these changes has significant implications for occupational health and safety.

In such a changed environment, it is not surprising that the regulatory approaches designed a generation ago are now in need of renewal. Against that background this report seeks to chart the way ahead for occupational health and safety into the new millennium. There are five key themes in this report.

1.   The urgent need for an overhaul of the *Occupational Health and Safety Act*, with a particular focus on the health and safety needs of vulnerable workers, new mechanisms to enhance and develop consultation in the workplace, and an enhancement and clarification of the role of Codes of Practice.

2.   Recognition of the positive role that occupational health and safety management systems can play in improving health and safety, provided that employees are given opportunities for genuine participation in decision making about the organisation of work.

3.   The need for more creative strategies to be used in providing guidance about workplace safety to small and medium sized enterprises.

4.   The need for the development of new approaches to enforcement.

5.   The need for the Government to articulate a clear vision statement and action programme for workplace safety.

The Committee is confident that the Government will meet the challenge. We are delighted that the Government has launched a community awareness campaign to raise the profile of workplace safety. There are other encouraging signs as well. Increased penalties for breaches of the *Occupational Health and Safety Act* and increased enforcement activity are driving the workplace safety message home to recalcitrant employers. Under the provisions of the *Workplace Injury Management and Workers Compensation Act 1998* the key

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[3]   Robens Committee (Committee on Safety and Health at Work), *Report of the Committee on Safety and Health at Work*, HMSO, London 1972.

stakeholders now have real ownership of not only the workers compensation system but also workplace safety regulation. This report commends these reforms and seeks to build upon them.

Acknowledgements

On behalf of the Committee I would like to thank all those individuals and organisations who have been of assistance to the Committee in this inquiry. I would like to thank Mr John Grayson, General Manager of WorkCover NSW, and his staff for their assistance throughout the inquiry and for their readiness to respond to numerous requests for information.

Most importantly, I would like to thank all of those organisations and individuals who took the time to make submissions to this inquiry and who have freely given of their time to participate in Committee hearings, round table meetings and seminars.

One of the most encouraging features of this inquiry has been the great enthusiasm and commitment of people from a wide range of backgrounds who are concerned about the completely unacceptable toll of workplace death, injury and disease.

I would also like to thank the staff of the Committee Secretariat for their work in the preparation of this report and for their assistance during the course of this inquiry. The Secretariat consists of: Mr David Blunt, Committee Director, who drafted this report and was generally responsible for the conduct of this inquiry; Ms Vicki Mullen, Senior Project Officer; and Ms Phillipa Gately, who formatted this report and provided essential administrative support throughout the inquiry. Mention should also be made of Ms Louise McSorley, who was Senior Project Officer from June 1997 to February 1998, and who drafted the Committee's *Interim Report* of December 1997 and *Issues Paper* of February 1998.

Finally, I would like to thank my fellow members of the Standing Committee on Law and Justice for the considered and constructive manner in which they have approached this inquiry. The Committee has operated in a non-partisan manner throughout this inquiry. Once again, every one of the 29 recommendations contained in this report has the unanimous support of all Committee members.

HON BRYAN VAUGHAN MLC
COMMITTEE CHAIRMAN

Summary of Recommendations

CHAPTER FIVE - AN APPROPRIATE LEGISLATIVE FRAMEWORK

Recommendation 1: The Committee recommends that the NSW Government fully implement the recommendations contained in the Committee's *Interim Report* of December 1997 for the comprehensive overhaul of the *Occupational Health and Safety Act*, so as to return NSW to the forefront of occupational health and safety regulation in Australia and ensure that the legislative framework is able to meet the challenges posed by the changes in the workplace over the last twenty years.

Recommendation 2: The Committee recommends that the objects of the *Occupational Health and Safety Act* be amended to ensure that particular attention is given to the occupational health and safety needs of vulnerable workers. [Refer to *Interim Report* - Recommendation 1.]

Recommendation 3: The Committee recommends that the *Occupational Health and Safety Act* be amended to enhance and develop mechanisms for consultation in the workplace, including the establishment of positions of health and safety representative (elected by employees) and health and safety officer (appointed by the employer). [Refer to *Interim Report* - Recommendations 21, 22, 23 & 24.]

Recommendation 4: The Committee recommends that the *Occupational Health and Safety Act* be amended to enhance the status of Codes of Practice. [Refer to *Interim Report* - Recommendation 29.]

Recommendation 5: The Committee recommends that the *Occupational Health and Safety Act* be amended to provide that an employer who complies with a Code of Practice is deemed to comply with the relevant law covered by the Code of Practice.

CHAPTER SIX - OHS MANAGEMENT SYSTEMS, RISK MANAGEMENT AND SMALL BUSINESS

Recommendation 6: The Committee recommends that the *Occupational Health and Safety Act* be amended to give statutory recognition to the use of OHS management systems and risk management as key tools in meeting the general duties requirements imposed upon employers in section 15 of the Act.

Recommendation 7: The Committee recommends that the *Occupational Health and Safety Act* be amended to impose a duty upon employers to adopt a systematic approach to the management of occupational health and safety. This systematic approach could be as simple as the application of the six-step approach to OHS being promoted by WorkCover NSW in its community awareness campaign, or it could be as complex as the application of an accredited OHS management system.

Recommendation 8: The Committee recommends the development of a Code of Practice on a systematic approach to occupational health and safety, including the application of an accredited OHS management system.

Recommendation 9: The Committee recommends that the *Occupational Health and Safety Act* be amended to require employers to consult with their employees at all stages of the implementation of a systematic approach to the management of occupational health and safety. There must be an explicit requirement for consultation in relation to the organisation of work.

Recommendation 10: The Committee recommends the development of a Code of Practice containing guidance on consultation in the implementation of a systematic approach to the management of occupational health and safety, and specifically in relation to consultation about the organisation of work.

Recommendation 11: In developing the Code of Practice referred to in Recommendation 10 and in establishing a system for the accreditation of OHS management systems, considerable attention should be given to the extent to which an OHS management system provides for genuine employee participation in decision making about the organisation of work.

Recommendation 12: The Committee recommends that the amendment of the *Occupational Health and Safety Act* and the development of the Codes of Practice referred to in Recommendations 6-10 be followed by a major community awareness campaign about the rights and duties of employees and employers in relation to consultation about the organisation of work in the implementation of a systematic approach to the management of occupational health and safety.

Recommendation 13: The Committee recommends that the community awareness campaign referred to in Recommendation 12 be followed by the provision of resources by Government to enable authorised trade union officers and employer associations to assist to energise consultation in workplaces.

Recommendation 14: The Committee recommends that the Industry Reference Groups established under the provisions of the *Workplace Injury Management and Workers Compensation Act* develop industry specific guidance material, to assist small and medium sized enterprises to implement a systematic approach to the management of occupational health and safety. The Committee recommends a focus upon the 5 or 6 most serious hazards or OHS issues in each industry and the provision of clear advice about how these hazards or

issues can be addressed.

Recommendation 15: The Committee recommends that WorkCover provide funding to employer associations, Chambers of Commerce and other networks to which small and medium sized enterprises belong and, in effect, channel its advisory and educative activities through these bodies.   The Committee recommends that consideration be given to the placement of WorkCover staff within employer associations, Chambers of Commerce etc for periods of up to 12 months at a time.

Recommendation 16: The Committee recommends that WorkCover work together with other Government agencies which provide advice (or undertake regulatory functions in relation) to small and medium sized enterprises (SMEs), with a view to developing complimentary guidance material which can be integrated into existing management systems of SMEs. The Committee also recommends that WorkCover utilise the networks and contacts which other Government agencies have with SMEs to enable guidance material to be effectively channelled to SMEs.

Recommendation 17: The Committee recommends the implementation of the two track enforcement model recommended by Professor Gunningham. That is, organisations which adopt accredited OHS management systems should be freed of some regulatory burdens, and enforcement activity and prescriptive regulatory requirements should be targeted at those organisations which do not adopt accredited OHS management systems.

Recommendation 18: The Committee recommends the development of appropriate financial incentives within the workers compensation premium structure, such as bonus/malus schemes, to encourage the adoption of OHS management systems.

Recommendation 19: The Committee recommends the development of performance indicators for employers adopting OHS management systems, including performance indicators to measure and assess the level of consultation about the organisation of work.

Recommendation 20: The Committee recommends that WorkCover NSW undertake careful monitoring, and commission a detailed review after three years, of the outcomes from the introduction of the requirement for a systematic approach to the management of occupational health and safety.

CHAPTER SEVEN - SOCIAL AND ECONOMIC COSTS

Recommendation 21: The Committee recommends that the *Occupational Health and Safety Act* be amended to ensure that Victim Impact Statements are admissible in the sentencing process for offences under the *Occupational Health and Safety Act.* [Refer to *Interim Report* - recommendation 18.]

Recommendation 22: The Committee recommends that the *Occupational Health and Safety Act* be amended to require the publication by WorkCover NSW of a "State of the Workplace" report, (based upon the model of the "State of the Environment" reports published by the Environment Protection Authority) providing a detailed assessment of occupational health and safety, once every two years.

Recommendation 23: The Committee recommends that WorkCover NSW provide sponsorship for the establishment of an award to recognise excellence in disclosure of occupational health and safety performance in annual reports. This sponsorship should initially be offered to Annual Report Awards Australia Inc.

Recommendation 24: The Committee recommends that, in the implementation of Recommendation 11, concerning the accreditation of OHS management systems, WorkCover NSW give attention to the extent to which OHS management systems require the disclosure of occupational health and safety performance information to shareholders and the community.

Recommendation 25: The Committee recommends that WorkCover NSW become a collaborating centre in the International Labour Organisation's Collaborating Safety and Health information (CIS) network, as a means of developing relationships and sharing information with occupational health and safety regulators in the Asian region.

CHAPTER EIGHT - PUTTING THE PIECES TOGETHER

Recommendation 26: The Committee recommends that the Occupational Health, Safety and Rehabilitation Council consult with members of the Brethren Assembly to develop a suitable mechanism under which provision could be made for a limited conscientious objection to the right of entry to a workplace by authorised officers of a trade union under the *Occupational Health and Safety Act.*

Recommendation 27: The Committee recommends that the Workers Compensation Advisory Council and the Workers Compensation Premiums Rating Bureau undertake a detailed investigation of the German workers compensation experience rating system and bonus/malus scheme, with a view to identifying the elements of the German system which are able to be applied in NSW.

Recommendation 28: The Committee recommends that, in order to avoid "reinventing the wheel", the Workers Compensation Advisory Council and Industry Reference Groups establish information sharing networks with the Danish Working Environment Council and Sector Safety Councils, the United Kingdom Health and Safety Commission and industry advisory committees, and the Central Federation of the German Berufsgenossenschaften.

Recommendation 29: The Committee recommends that the NSW Government prepare and publish, within twelve months, an occupational health and safety vision statement and action programme, along the lines of the Danish *Clean Working Environment 2005.*

Chapter One
Introduction

1.1   Background to this inquiry

1.1.1   On 26 June 1996 the Legislative Council referred the matter of workplace safety to the Standing Committee on Law and Justice. The terms of reference were:

> That the Standing Committee on Law and Justice inquire into and report on workplace safety matters, with particular reference to:
>
> (a) integrating management systems and risk management approaches aimed at reducing death and injury in the workplace;
>
> (b) social and economic costs to the community of death and injury in the workplace; and
>
> (c)   the development of an appropriate legislative framework for regulatory reform and/or codes of practice in relation to occupational health and safety in the workplace.[4]

1.1.2   On 5 July 1996 the Premier publicly announced the Committee's inquiry, at the launch of Advocates for Workplace Safety. The Premier said that the Committee would undertake a wide ranging inquiry.[5] The Attorney General endorsed the reference to the Committee and placed it within the context of reforms in the area of occupational health and safety introduced by the Government.

> The Upper House review will be another step in the evolution towards safer workplaces, with a focus on further improving existing legislation and regulations.[6]

1.1.3   The Attorney General also announced the appointment of Professor Ron McCallum, Blake Dawson Waldron Professor of Industrial Law at the University of Sydney to "conduct an independent review of the Occupational Health and Safety Act and report to the Standing Committee".[7]

1.2   Conduct of this inquiry during 1998

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4   *Legislative Council, Minutes of Proceedings,* 26/6/96, p 284.

5   "Premier Launches Review into Workplace Deaths", *News Release*, 5/7/96.

6   "Review Continues Push for Safer Workplaces", *News Release*, 5/7/96.

7   Ibid.

1.2.1   The Committee's *Interim Report* of December 1997 details the conduct of the inquiry during 1997.[8]   The *Interim Report* outlines the decision making processes leading to the Committee's decision to report in two stages, with the *Interim Report* dealing with the Committee's response to the report produced by Professor McCallum's panel of review of the *Occupational Health and Safety Act 1983*.[9]   The Committee's *Interim Report* made 32 recommendations for amendments to the *Occupational Health and Safety Act* and the way in which it is implemented, each of which had the bipartisan support of all Committee members.   A summary of the recommendations contained in the *Interim Report* is included as Appendix Five to this report.

1.2.2   It was always the Committee's intention that, following the finalisation of the *Interim Report*, setting out the Committee's concluded views on the *McCallum Report*, it would move to examine the broad range of issues identified in the terms of reference received from the Legislative Council.   In February 1998 the Committee therefore tabled an *Issues Paper* which sought to set out the framework for the remainder of the inquiry during 1998.[10]   The *Issues Paper* identified 10 specific questions which the Committee wanted to see addressed in submissions.   Included as Appendix Six is a summary of the questions posed in the *Issues Paper*.

1.2.3   The *Issues Paper* was widely circulated to relevant interest groups, trade unions, employers associations and individuals and organisations which had previously shown an interest in the Committee's inquiry, with an invitation for submissions to be made.   The original closing date for submissions was 31 May 1998.   This was extended to 31 July and further submissions were accepted after that date. Ultimately, the Committee received 37 submissions in response to the *Issues Paper*.   This is in addition to the 40 submissions received during 1997.   Included as Appendix Seven is a list of the authors of the submissions received during the course of the inquiry.

1.2.4   In July 1998 a delegation consisting of the Committee Chairman, the Hon Bryan Vaughan MLC, the Deputy Chair, the Hon John Ryan MLC, and the Committee Director, Mr David Blunt, undertook a study tour to Europe.   The purpose of the study tour was to investigate recent developments in the regulation of workplace safety in Europe, with particular reference to the use of health and safety management systems (OHS MS) and their potential

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[8]   Standing Committee on Law and Justice (hereafter SCLJ), *Report on the Inquiry into Workplace Safety: Interim Report*, December 1997 (hereafter *Interim Report*), pp 2-4.

[9]   *Review of the Occupational Health and Safety Act 1983: Final Report of the Panel of Review*, February 1997 (hereafter *McCallum Report*).

[10]   SCLJ, *Issues Paper on Workplace Safety*, February 1998 (hereafter *Issues Paper*).

application to small and medium sized enterprises (SMEs). Included as Appendix One is a report which contains a description of each meeting held by the delegation and sets out some of the key lessons to arise for NSW.

1.2.5   Following the study tour and the receipt of a substantial number of submissions in response to the *Issues Paper*, the Committee held five days of public hearings and round table meetings on 17, 18, 24, 25 and 26 August. The witnesses and participants in those hearings and round table meetings are listed in Appendix Eight.

1.2.6   The Chairman's draft of this report was completed at the end of October. The Committee met to deliberate on the report on 11 and 12 November. As a result of those deliberations, a number of amendments were made to the Chairman's draft report. The amended report was formally adopted by the Committee at a meeting on 23 November. The Committee deliberations are included in the Minutes of Proceedings which are reproduced in Appendix Nine.

1.3   Nature of this report

1.3.1   This report is premised upon the idea that the toll of death, injury and illness in the workplace is too high. The report notes the important reforms in the regulation of occupational health and safety (OHS) in NSW in recent years. However, this report suggests that, in order to achieve significant improvements OHS there is a need for some new thinking and a new approaches to some of the issues which confront OHS regulators. The report seeks to draw together a new mix of legislative reform proposals, regulatory practices and strategies for providing guidance to industry, which the Committee argues would place NSW in the forefront of international best practice and allow significant inroads into the levels of occupational fatalities, injury and disease.

1.3.2   This report is divided into two parts. **Part One**, consisting of Chapters 2-4, provides information on the current state of workplace safety in NSW. This information provides the context and essential background for the Committee's recommendations for reform.

1.3.3   **Chapter Two** provides a brief statistical overview. There is a very brief snapshot of the nature of workplace injuries and occupational diseases, drawn from workers compensation data. This chapter also presents some data which seeks to illustrate longer term trends in workplace injuries and occupational diseases. The conclusion is reached that despite apparent improvements in injury rates (particularly fatalities) the toll of workplace death, injury and disease continues to be unacceptably high.

1.3.4   **Chapter Three** discusses the dramatic changes which have occurred in the workplace over the last 20 years and the OHS implications of these changes. By way of a case study, there is a brief discussion of evidence received by the Committee in relation to the growth in outworking and child labour.

1.3.5   **Chapter Four** outlines a number of significant reforms that have been introduced by the current Government.

1.3.6   The Committee's recommendations for reform are detailed in **Part Two**, consisting of Chapters 5-8. Chapters 5-7 each correspond to a particular paragraph in the Committee's terms of reference, and address the questions posed in the Committee's February 1998 *Issues Paper*.

1.3.7   **Chapter Five** discusses the key issues in the future development of the legislative framework. The chapter briefly outlines the development of the NSW legislative framework. The chapter identifies what in the Committee's view are essential reforms to adapt the Robens approach to the changing nature of the workplace and the changing industrial climate. The Committee reiterates the recommendations contained in the *Interim Report* for new consultative mechanisms, such as the establishment of the position of health and safety representative. The Committee also calls for a new and enhanced role for Codes of Practice and for recognition in the objects of the Act of the particular OHS issues faced by vulnerable workers.

1.3.8   **Chapter Six** deals with a range of related issues including OHS management systems, risk assessment and the OHS needs of small and medium sized enterprises (SMEs). The chapter discusses recent developments in the use of OHS management systems. Importantly, the chapter draws upon the lessons learnt by the delegation which undertook the European study tour, distinguishing between the Scandinavian approach to OHS management systems and corporate safety systems, and highlighting the need for genuine employee participation in decision making about the organisation of work for OHS management systems to be a useful and positive influence. The Chapter includes recommendations for the introduction into the *Occupational Health and Safety Act* of a general duty for employers to adopt a systematic approach to the management of occupational health and safety, together with a requirement for employers to consult with their employers at all stages of this process, including in relation to the organisation of work. The Chapter recommends the development of Codes of practice to provide guidance about how to comply with these requirements. The chapter also discusses more creative approaches to the provision of OHS advice to small and medium sized enterprises (SMEs). This chapter also discusses related changes which the Committee would like to see introduced to enforcement strategies and the potential use of financial incentives to encourage the adoption of a

systematic approach to the management of OHS and consultation about the organisation of work.

1.3.9 **Chapter Seven** discusses the social and economic costs to the community of workplace injuries and occupational disease. The Committee commends the Government's recent community awareness campaign and makes a number of recommendations aimed at ensuring that the community is provided with ongoing information about the extent of workplace death, injury and disease.

1.3.10 **Chapter Eight** seeks to "put the pieces together". There is a brief discussion of the remaining issues raised in the Committee's February 1998 *Issues Paper.* It also discusses a number of lessons drawn from European experience and makes a number of recommendations designed to ensure that NSW learns from that experience. The final recommendation is for the development and publication by the NSW Government of a vision statement and action programme for occupational health and safety in NSW over the next ten years.

1.3.11 It needs to be emphasised that this report does not attempt to be a comprehensive analysis of all aspects of OHS legislation and enforcement. The Committee has not sought, for instance, to recreate the comprehensive national inquiry conducted by the Industry Commission in the early 1990's.

1.3.12 Furthermore, the Committee has not attempted to address every issue raised in submissions or evidence received by the Committee.

1.3.13 What the Committee has sought to provide the Parliament with in this report is two things. Firstly, the report provides an overview of the current situation of workplace safety in NSW. Secondly, the report seeks to provide a practical set of recommendations for reform. The Committee believes these reforms will address the challenges posed by changes in the workplace and will enable the NSW Government to counter the still unacceptable level of workplace death, injury and disease.

PART ONE

OHS IN NSW:

THE CURRENT SITUATION

Chapter Two
Statistical overview

2.1   A snapshot of workplace injury and disease in NSW in 1998

2.1.1   Set out below is some brief statistical data provided to the Committee by WorkCover NSW which provides a brief snapshot of the extent of workplace injury and disease in NSW. This information is drawn from workers compensation data. The information must therefore be treated with caution, as it is widely acknowledged that workers compensation data significantly under-estimates the extent of workplace death, injury and disease. Indeed it has been suggested that less than half of all work-related injuries and diseases are included in workers compensation data.[11]

2.1.2   However, against that background, the Committee believes these statistics provide a useful starting point in seeking to gain an appreciation of the extent of workplace injuries and occupational illness in NSW. Workers compensation data shows that **in NSW during 1996/97 there were:**

- **173 deaths from employment injuries**;

- **15,805 instances of permanent disability from employment injuries**; and

- 5,733 instances of disabilities for 6 months or over from employment injuries.[12]

2.1.3   Some other figures, also drawn from workers compensation data, which further fill in the snapshot of workplace injury and occupational disease in NSW in 1998 are set out below:

- The average incidence of employment injuries (including workplace injuries and occupational diseases) in 1996/97 was 26.2 per 1,000 workers.   Against that average figure, the **industries** with the highest incidence of employment injuries in 1996/97 were: non-building construction (105.8); storage (102.3); mining [other than coal] (74.2);

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[11]   Industry Commission, *Work, Health and Safety*, September 1995, pp 7-8. The Committee also recognises that particular care needs to be taken in relation to workers compensation data in relation to occupational disease. It is now widely recognised that more than four times as many people die each year from occupational disease than from workplace accidents, yet this is not apparent from workers compensation data.

[12]   This information was provided to the Committee Secretariat as part of ten year trend information detailed later in this chapter.

services to agriculture (69.2); and transport equipment manufacturing (63.6).

- The **occupations** with the highest incidence of employment injuries in 1996/97 were: trade assistants and factory hands (82.8); construction and mining labourers (80.8); metal trades persons (68.8); road and rail transport drivers (64.0); and stationary plant operators (61.1).

- For males, the highest incidence of employment injuries was in the 60-64 age group (63.2) and for females was in the 50-59 age group (22).[13]

- 40% of workplace injuries were sprains and strains due to body stressing and 31% of workplace injuries were back injuries.[14]

- The most common occupational diseases involve: deafness (52%); "mental disorders" [including stress] (14%); and occupational overuse syndrome (10%).[15]

2.1.4   As outlined in Chapter Seven, it is estimated that **the cost of work-related injuries and disease in NSW is at least $6.3 billion per year**.

2.2   Long term trends

2.2.1   Set out on the next few pages are a series of graphs which seek to provide an overview of trends in workplace injuries and occupational diseases in NSW over the last ten years. These statistics are drawn from workers compensation data and have been prepared by the Statistics Branch of WorkCover NSW, in response to a request by the Committee Secretariat. Following the graphs is an explanation of the data sources and the definitions of the terms that are used.

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[13]   WorkCover NSW, *NSW Workers Compensation Statistics Bulletin 1996/97*, WorkCover NSW Statistics Branch, 1998, p 15.

[14]   Ibid, p 29.

[15]   Ibid, p 61.

Table 1: Employment injuries for new major claims

Year	Extent of Disability				
	Fatal	Permanent Disability	6 months and over	Less than 6 months	**Total Disability**
1987/88	209	5, 270	4, 922	49, 543	59, 944
1988/89	244	6, 936	4, 554	48, 720	60, 454
1989/90	210	7, 748	3, 676	48, 785	60, 419
1990/91	233	7, 875	4, 287	42, 913	55, 308
1991/92	177	9, 734	2, 796	38, 370	51, 077
1992/93	156	12, 285	2, 711	35, 698	50, 850
1993/94	185	17, 598	3, 301	37, 505	58, 589
1994/95	177	20, 051	4, 398	38, 214	62, 840
1995/96	181	19, 046	5, 453	37, 789	62, 469
1996/97	173	15, 605	5, 733	38, 598	60, 109

Table 2: Occupational disease for new major claims

Year	Extent of Disability				
	Fatal	Permanent Disability	6 months and over	Less than 6 months	**Total Disability**
1987/88	42	3, 347	359	3, 135	6, 883
1988/89	46	4, 159	432	3, 021	7, 658
1989/90	29	4, 572	323	2, 991	7, 915
1990/91	58	5, 402	429	2, 727	8, 616
1991/92	44	6, 414	314	3, 020	9, 792
1992/93	38	8, 466	362	3, 075	11, 941
1993/94	55	11, 973	516	3, 566	16, 110
1994/95	31	12, 141	714	3, 925	16, 811
1995/96	41	11, 473	805	3, 892	16, 211
1996/97	45	6, 849	819	3, 681	11, 394

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Report Generated 22 October 1998
Statistics Branch WorkCover NSW
Statistical files for 1987/88 - 1996/97

Explanation of data sources and definitions

The tables and graphs on the preceding pages refer to **new major claims** which are defined as below:

New major claim is any claim that is entered on an insurer's computer system in the relevant financial year and resulted in a fatality, permanent disability or temporary disability where five or more working days were paid for total incapacity.

Time lost is the number of weeks for which the claimant has been off work. For claims not finalised, it is the combination of time already lost plus an estimate of total time likely to be lost. In such cases, it comprises the actual period off work from the time of the injury to the end of the reference period plus an estimate of the future period off work based on an estimated date fit to resume work.

Time lost is not necessarily paid time lost. It includes paid days off but may also include weekends, holidays or periods for which compensation was not paid. For a small number of claims, time lost is greater than three years, and these claims have not been included in the tables.

Gross incurred cost is the sum of payments made, and for claims still open at the end of the financial year, an estimate of future liability for that claim is also added to the sum of payments made.

Extent of disability refers to the long term effect of the employment injury. As data in these tables are current at the end of the stated financial year, if the extent of the disability changes in subsequent years eg, from permanent disability to fatal, the final extent of disability will not be recorded in these statistics. Extent of disability is classified into the following categories:

Fatal workplace injuries are those which result in the death of the injured worker. This comprises cases where the worker is killed at work and cases where the worker subsequently dies from injuries received (except where death occurs after the end of the financial year in which the injury was originally reported as non-fatal).

Temporary disability refers to an injury that does not result in death or permanent disability.

Permanent disability refers to an employment injury where the worker is considered to be either totally or partially permanently incapacitate for any type of work. Partial disability refers to the partial or complete loss of, or loss of the use of, any part of the body faculty, resulting in a permanent diminution of the person's earning capacity or opportunities for employment, although he or she is still able to work.

In line with the standards in the National Data Set, extent of disability differentiates between temporary cases deemed 'severe' compared with cases deemed 'non-severe'. Cases where temporary incapacity is deemed 'severe' are those that result in less than 6 months off work, while those that result in less than 6 months off work are deemed 'non-severe'. To determine whether a case is 'severe' or not, time lost, as defined above, is used, that is, liability for future time off is included in the calculation.

2.2.2 It is the Committee's understanding that the workers compensation data available to WorkCover NSW does not go back beyond 1987/88. Beyond that period the definitions used in the data collected and published is not necessarily consistent with that available since 1987/88. It is therefore impossible to provide any reliable long term trend information going back beyond 1987/88.

2.2.3 Perhaps the only reasonably reliable data is for deaths from workplace injuries and disease. For example, the *Williams Report* records that during 1976/77 there were 145 deaths from workplace injuries and 98 deaths from occupational disease. The *Williams Report* further comments that the figures contained in the annual reports of the Workers Compensation Commission show a steady decline in deaths from workplace injury and disease since 1968.[16]

2.2.4 Assuming that the figures referred to in the *Williams Report* are comparable with those set out on the previous pages, we can see a fall in fatalities from employment injuries from 243 in 1976/77 (and according to Williams a "steady decline to this figure from 1968") to 173 in 1996/97. A decline of this magnitude would be consistent with statistics from a number of European countries provided to the delegation which undertook the study tour to Europe in July 1998. However, it is generally accepted, at least in Europe, that much of any such decline in fatalities can be attributed to changing employment patterns, including the decline in the number of employees in traditionally dangerous industries such as manufacturing and mining.[17]

2.2.5 *In any case what is evident is that, despite the appearance of a decline in fatalities of 29% over the last 20 years, the level of workplace death and injury, and occupational disease, is still too high and is completely unacceptable.*

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[16] Williams T G, *Report of Commission of Inquiry into Occupational Health and Safety*, 1981, p 9.

[17] See for example the description of the discussions with Mr David Ashton of the Health and Safety Executive and Dr Matthias Beck, *Report on European Study Tour, July 1998*, reproduced as Appendix One, pp 51, 54.

Chapter Three
Implications of changes in the workplace

3.1 Changes in the workplace

3.1.1 The Committee has been greatly assisted in its consideration of the implications of changes in the workplace by the evidence and submissions of Professor Michael Quinlan, Head of the School of Industrial Relations and Organisational Behaviour at the University of NSW. In his initial submission to the Committee, Professor Quinlan summarised the most important changes in the workplaces in recent years:

> In the past 15 years there has been more change in the workplace than in any other part of the post world war two era and possibly the last 100 years. These changes are global although some variations need to be acknowledged. A list of some of the more important changes would include the following:
>
> • Changes to work processes and technology including increased automation, use of computers and related information systems, changes in the physical environment (air-conditioning, use of lasers etc) and changes to chemicals and other substances present in the workplace;
>
> • Changes to organisational structures and work practices including management restructuring/devolution; changes to staffing levels; increased use of outsourcing and shiftwork/nightwork, changes to pay/reward systems, and altered production processes resulting from market and quality considerations;
>
> • Changes to the regulatory environment resulting from stiffer environmental protection laws, anti-discrimination/EEO laws, changes to industrial relations laws and changes to OHS and workers compensation laws.
>
> • Changes to economic structures including the privatisation of some public agencies, the corporatisation of other public agencies and the growth of small business in terms of employment relative to large firms.
>
> • Changes to the workforce including the ageing of the workforce, the long term increase in the workforce participation rate of women, the greater use of casual and part-time employees and the growth of self-employment.[18]

3.1.2 In his second submission, Professor Quinlan provided a thorough discussion of these issues, through the provision of a number of research reports. One of these was a study of international literature on labour market restructuring

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[18] *Submission*, Professor M Quinlan, 5/5/97, p 1.

in industrialised societies. Professor Quinlan summarised the trends in labour market restructuring across industrialised countries as:

- Growth in female workforce participation rate.

- Growth in youth labour force participation rate (due to students undertaking part-time work).

- Increasing use of shift/night work arrangements.

- Ageing of population and labour force.

- Decline in male workforce participation rate.

- Growth of outsourcing, downsizing and work restructuring amongst large organisations.

- Growth of employment share of small business and franchise arrangements.

- Growth of self-employment, casual, part-time and other contingent work forms.

- Decline in employed proportion of the workforce.

- Decline in proportion of employees on permanent full-time basis.

- Decline in average/median job tenure.[19]

3.1.3　　The other person who has assisted the Committee in its consideration of the implications of changes in the workplace is Professor Ron McCallum, Professor of Industrial Law at the University of Sydney and Special Counsel on Industrial Law with Blake Dawson Waldron. When he gave evidence before the Committee in August 1998, Professor McCallum spoke about the nature of employment in NSW. He tabled and spoke to a recent report of the NSW Department of Industrial Relations.[20] Professor McCallum pointed out the following facts:

- There are 2.75 million people employed in NSW.
- 57% are men, 43% are women.

- 76% of employed people work full time, 24% work part time.

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[19]　　*Submission*, Professor M Quinlan, 5/5/98, Appendix One: "Labour Market Restructuring in Industrialised Societies", p 23.

[20]　　NSW Department of Industrial Relations (NSWDIR), *Industrial Relations in NSW 1997 Report,* 1997.

- 24.8% of employed people are employed on a casual basis, of which 55% are women, 45% men.

- There are 900,000 small businesses in Australia, employing over 3.2 million people, and one-third of these are located in NSW, making up 97% of NSW businesses.

- Trade union membership has fallen to 33% of male employees and 27% of female employees, and only 24% of private sector employees.

Professor McCallum commented that the changes in the workplace amounted to "vertical disintegration of our industries", in terms of outsourcing, the proliferation of labour hire companies, the growth in the small business sector and the decline in the trade union movement.[21]

3.2   OHS implications of changes in the workplace

3.2.1   In his first submission to the Committee, Professor Quinlan acknowledged that some of the changes in the workplace over the last 20 years can be expected to have a positive impact on occupational health and safety. Technological developments can lead to the elimination of particular hazards, replacing hazardous plant, substances or work processes.[22] This point was also made in the submission and evidence the Committee received from Mr Stan Ambrose AM, an eminent pressure equipment engineer.   Mr Ambrose referred the important role of science and technology, and engineering, in reducing the harm caused by explosions of pressure equipment.

> Boilers ... killed thousands annually in the UK and USA in the early to mid-1800's, but now it is less than 10. (In NSW no such death has occurred in over 30 years.)[23]

3.2.2   Professor Quinlan also referred, in his first submission, to the way in which labour market and industrial restructuring may lead to improvements in OHS through the shift away in traditionally dangerous industries, such as manufacturing, towards services and knowledge based industries. (In fact, as noted in Chapter Two, it has been suggested that any apparent improvements in OHS statistics over the last 20 years can be directly attributed to these changes in employment patterns and the decline in the

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[21]   *Evidence*, 28/8/98, Professor R McCallum, p 16.

[22]   *Submission*, 5/5/97, Professor M Quinlan, p 1.

[23]   *Submission*, 31/7/98, Mr Stan Ambrose AM, p 1.

numbers of people employed in manufacturing and extractive industries.)[24] Professor Quinlan also mentioned the increasingly educated and ageing workforce as having the potential to lead to improved occupational health and safety.

3.2.3   However, Professor Quinlan argued that any positive OHS effects of recent changes in the workplace are overwhelmed by the significant adverse implications of changes to the way in which work is organised. By way of example, Professor Quinlan referred to a number of OHS problems associated with the **changes to working hours and the growth of shiftwork**:

> The slow decline in average working hours has stalled or gone into reverse in recent years especially if unpaid overtime is taken into account. Around 20% of the working population of many advanced countries now perform shiftwork or nightwork and this figure has been growing since the 1970's. In a number of industries eight hour shifts have been replaced with 12 hour shifts. This has often occurred without any accompanying recalibration of exposure standards... Further, the growth of shiftwork and lengthening of shift hours (and working hours more generally) mean that fatigue is re-emerging as a major OHS issue.[25]

3.2.4   In his second submission to the Committee, Professor Quinlan included as an Appendix a research report which detailed international literature on the implications of labour market restructuring for occupational health and safety. Some of the key points made in Professor Quinlan's paper are summarised below. In relation to labour shedding by large organisations, Professor Quinlan identified the following OHS implications:

> **Downsizing and associated changes** (such as privatisation) by large organisations, as well as the climate of job insecurity these foster, can have a number of adverse effects on OHS due to:
>
> • increased workloads/deadline pressures, longer hours and other forms of work intensification which also adversely affect work/family balances...;
> • loss of corporate memory, technical expertise and experienced personnel magnified by the tendency of older workers to take redundancy packages and for more able managers to jump ship...;
>
> • insecurity generated stress/mental illness, lowered morale/commitment and guilt amongst those surviving bouts of labour shedding...;

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[24]   See for example the description of the discussions with Mr David Ashton of the Health and Safety Executive and Dr Matthias Beck, *Report on European Study Tour, July 1998*, reproduced as Appendix One, pp 51, 54.

[25]   *Submission*, 5/5/97, Professor M Quinlan, p 2.

- workers becoming distracted from job tasks and reduced participation in activities deemed as non essential, including OHS...;

- job transfers or task restructuring where insufficient attention is given to OHS risks and even more general undermining of the OHS management function due to direct reorganisation, bypassing in decision-making, disruption to traditional communication channels and a breakdown of trust amongst employees.[26]

3.2.5   In relation to the growth of employment in the small business sector, Professor Quinlan drew together the following OHS implications from the international literature:

> A growing body of more general research on **OHS in small business** identified a number of common problems, notably:
>
> - a low level of OHS awareness and a tendency to place responsibility with workers;
> - a lower level of worker training;
> - limited knowledge of OHS regulations and contact with OHS agencies (The top-down approach of OHS agencies, generic OHS materials and systems-based approaches is not effective with small business which would prefer a bottom-up or hazard-based approach);
> - a lower level of compliance with OHS standards due to ignorance, a failure to see the need for government intervention, or calculated on the remote risk of prosecution;
> - the absence of a management system or OHS program and a lack of expertise, time, money and logistical resources to devote to OHS (small business operators rely heavily on guesswork);
> - economic and time pressures discourages attention to OHS.
>
> These may combine with other labour market and institutional factors. For example, younger workers are more likely to be found in small workplaces and in casualised industries. This can be a lethal combination.[27]

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[26]   *Submission*, 5/5/98, Professor M Quinlan, Appendix Two, p 35.

[27]   Ibid, p 36.

3.2.6   In relation to the growth in part-time and casual work, Professor Quinlan identifies the following OHS implications:

OHS problems associated with the **shift to temporary and part-time work** [include]:

- these workers are less likely to have received training, including training in OHS (the problem may be acute for younger workers)...;
- temporary workers are more likely to lack job specific knowledge and experience...;
- casualisation, part-time/fractional work or job-sharing can entail covert or overt workload increases affecting both contingent workers and residual permanent full-time staff called on to fill gaps or co-ordinate more complex work processes...;
- the introduction of temporary employees can lead to workgroup disintegration, weaken union representation, facilitate more authoritarian styles of management, and encourage workers to inculcate risks as a natural part of the job;
- despite presumptions to the contrary, temporary and part-time work can lead to incompatibilities between work and family commitments that adversely affect OHS...; and
- the increasing use of temporary workers creates additional demands on OHS agencies to ensure this is not compromising OHS standards.[28]

3.2.7   In relation to subcontracting and outsourcing, Professor Quinlan identifies the following risk factors from the available literature:

Risk Factors Associated with **Subcontracting/Outsourcing**
Economic and Reward Factors:
- Competition/under-bidding of tenders.
- Taskwork/payment by results.
- Long hours.
- Lack of resources.
- Off-loading high risk activities.
Disorganisation:
- Ambiguity in rules, work practices and procedures.
- Inter-group/inter-worker communication.
- More complicated lines of management control.
- Splintering of OHS management system.
- Inability of outsourced workers to organise/protect themselves.
Increased likelihood of regulatory failure:
- OHS laws focus on employees in large enterprises.
- OHS agencies fail to develop support materials.

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[28]   Ibid, pp 37-38.

- OHS agencies fail to pursue appropriate compliance strategies.
- Self-employment not covered by labour minimum standards laws.
- Self-employed not covered by workers compensation.[29]

3.3 Case study: outworking and child labour

3.3.1 In relation to the implications of outsourcing, Professor Quinlan provided the Committee with a copy of a recent study which compared the OHS experience of factory based workers and outworkers in the Australian clothing industry.[30] The study found that outworkers suffered three times the level of injuries of factory based workers. Professor Quinlan gave evidence to the Committee in which he identified the reasons for this higher rate of injury, including very low rates of pay and long hours of work:

> We found there was a stark difference in the incidence of injury between those groups. Outworkers in the clothing industry reported three times the level of injury of all types, including chronic injury—where 79% reported some type of chronic injury—than factory-based workers. We have looked at outsourcing over a number of industries, and I believe this is the starkest finding we have been able to make.

> We found the reasons they were injured were twofold. One is that they were all paid under a piecework payment system which placed them under a lot of pressure and, second, and related to this, they worked extraordinarily long hours. If my memory is correct, about 60 per cent worked more than a 49 hour week and many of them worked more than 10 or 12 hour days. They made it clear to us in the course of the interviews that they did this because their rates of return were $2 to $5 per hour, which is well below half the minimum award rate. They work extraordinarily long hours to make up for very low levels of payment. The injuries they were getting, which, in some ways, were typical of the factory-based workers, were injuries one would expect from overwork. They had chronic overuse injuries. With these sorts of injuries the longer one works the worse the injuries become and the more likely one is to suffer them.

> We came to a clear view that the long hours being worked by outworkers, which were a product of the very low payments they were receiving, plus the pressure of piecework and meeting tight production schedules, were the predominant reasons why they had injuries. That report has now been out for about two months and no-one has seriously questioned its findings, because the sample size is quite large and the findings therefore are quite robust and not easy to be challenged. As we understand it, that is the first study in the

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[29] *Submission*, 5/5/98, Professor M Quinlan, Appendix Two: "The Implications of Labour Market Restructuring in Industrialised Societies for Occupational Health and Safety", p 34.

[30] C Mayhew & M Quinlan, *Outsourcing and Occupational Health and Safety: A Comparative Study of Factory-based and Outworkers in the Australian TCF Industry*, UNSW Studies in Australian Industrial Relations, Industrial Relations Research Centre, 1998.

world that has specifically compared a sample of outworkers to factory-based workers.[31]

3.3.2   The report made a range of recommendations aimed at addressing the OHS needs of outworkers. These included: the development of accessible OHS guidance material (a two page brochure) for outworkers; the establishment in each state of a task force involving government, industry, union and community representatives to develop specific OHS strategies; the enforcement of duty of care provisions in relation to "middle men"; the appointment of regional inspectors with prime responsibilities for outworkers; and enforcement of the outworkers clauses in the federal and state clothing awards.[32]

3.3.3   The Committee had received some evidence in relation to outworkers during the first part of this inquiry in 1997. The Committee received a submission from the Textile Clothing and Footwear Union (TCFU), and received evidence from the Assistant Secretary of the NSW Branch, Mr Barry Tubner, and the Workers compensation and OHS Officer, Mr David Tritton. They estimated that there are 300,000 outworkers in Australia, and that there are 14 outworkers for every factory-based worker in the clothing industry.[33] The TCFU called for outworkers to be deemed to be employees under the *Occupational Health and Safety Act*. They also called for the development of a registration system, akin to that provided for in the Clothing Trades (State) Award. WorkCover and authorised union officers would then be able to utilise the information contained in such a registration system to inspect the premises where outworkers work.[34]

3.3.4   During Professor Quinlan's evidence before the Committee, there was discussion of the emergence of child labour within the outworking industry. Professor Quinlan confirmed the involvement of children in outwork and gave an example of two girls who started this work at the ages of seven and eight.

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[31]   *Evidence*, 17/8/98, Professor M Quinlan, p 5.

[32]   Mayhew & Quinlan, *Outsourcing & OHS*, op cit, pp 145-148.

[33]   *Evidence*, 7/10/97, per Mr D Tritton, p 23.

[34]   *Submission*, 31/7/97, Textile Clothing and Footwear Union (TCFU), NSW Branch, p 13.

COMMITTEE: The Assistant Secretary of the Textile Workers Union informed the Committee in sworn evidence that he saw a child of 10 years of age stacking garments for his mother in the lounge room of their house, which was in the Cabramatta area. That child is a worker, of course, but we will never see his name in the statistics.

Professor QUINLAN: That is right. And if we do not do something about this, we will have to rethink our child labour laws. I talked to a student who is a member of an outworker family. She started at eight years of age, and her sister started at seven years of age. Her sister's university studies were stopped because the family could not afford it. The girl herself, who is from a Vietnamese family, was on the point of missing out on her one go at university because the peak production cycle with outworkers, which is in October, tends to coincide with their exams. They were just not paid enough money; she could be forced to work. They were trying to protect the younger son, who was about 14 years of age. They were trying to limit the amount of work he had to do to maintain the family income. Of course, that caused some resentment in the family, particularly from the older sister, whose life had been quite devastated by her inability to continue her education. When *A Current Affair* did the show on outworkers about six weeks ago it showed children working in a family scene. The Senate heard a lot of evidence about the use of child labour. One of the things that is fairly clear about the growth of home work is that it is associated with the re-emergence of child labour.[35]

3.3.5   Following media reporting of Professor Quinlan's evidence to the Committee about outworking and child labour, the Committee received a copy of a report on the review of the *Children (Care and Protection) Act 1987*, prepared for the Minister for Community Services by a review team chaired by Professor Patrick Parkinson, Professor of Law at the University of Sydney.[36] The review report contained a short section dealing with the issue of children's employment. The report expressed concern about the plight of children involved in outwork and referred to reports of children working up to 35 hours a week and every day of the year, together with reports of children working on industrial sewing machines.   The report commented that:

Clearly the protection of children involved in outwork is a priority and an area where greater regulation is required to ensure that children are not exploited and that they have time to do their homework and spend time with friends or pursue recreational interests.[37]

3.3.6   Professor Parkinson's report made 10 recommendations for changes to the *Children (Care and Protection) Act* to provide a more comprehensive system

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[35]   Ibid, p 8.

[36]   NSW Department of Community Services Legislation Review Unit, *Review of the Children (Care and Protection) Act 1987*, December 1997.

[37]   Ibid, p 241.

of regulation and licensing for the employment of children. Some of the main recommendations include the following:

> 4. It should be an offence to employ a child or a young person below compulsory school leaving age without an employer's authority or unless the arrangement is made through an agent authorised to arrange the employment of children. An employer's or agent's authority is not required:
>
> > I) where the child is ten years old or older and the employment is outside school hours and the child is working for less than ten hours per week; or
> >
> > II) the child is engaged or employed by a parent or guardian outside school hours and the child is directly supervised by the parent or guardian.
>
> 5. A child shall be deemed to be employed by the manufacturer or its agent (and not the parent) where the child is assisting a parent in the production, assembly or manufacture of clothing, electronic goods or other items intended for sale.
>
> Comment [from Professor Parkinson's report]: A major concern for the review was the plight of the children of some outworkers. Where a manufacturer or their contractor has engaged the services of an outworker, knowingly setting unrealistic targets in terms of number of units to be made in a specified period, forcing a parent into the situation of having to call upon their children to meet the order, the contractor should be held responsible for their unethical practices. Where the contractor and the parent are the same person, the parent will be considered the employer and the provisions of recommendation 4 will apply.[38]

3.3.7   The issue of child labour generally, and child labour within outworking specifically, was the subject of newspaper reports on Monday 26 October 1998. The *Sydney Morning Herald* reported that "more than four child workers, some as young as 12, are seriously injured at work every day across Australia". The report noted that in NSW there was one fatality and 390 serious injuries involving children aged 16 and under during 1996-97.[39]

3.3.8   In answer to a parliamentary question on 27 October 1998, the Attorney General and Minister for Industrial Relations, the Hon Jeff Shaw QC MLC, said that Professor Parkinson would be chairing a further examination of these issues, and that it was anticipated that legislation would be introduced

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[38]   Ibid, pp 244, 246. It should be noted that the Committee has been advised that there is significant doubt as to whether it is possible to deem children employees and consider a parent an employer, due to the fact that parents do to intend to enter legally binding employment contracts with their children.

[39]   G Ryle & G Hughes, "Youth work injury toll soars", *Sydney Morning Herald*, 26/10/98, p 1.

into Parliament during the first half of 1999 to implement the recommendations made in the report on the review of the *Children (Care and Protection) Act*.[40] The Committee understands that Professor Parkinson's further examination of these issues will be comprehensive and that there will be scope for a range of options to be considered for dealing with child labour generally, and in the area of outworking specifically. In relation to child labour and outworking, the Committee understands that one of the issues to be considered will be the possibility of bringing domestic premises within the ambit of the *Occupational Health and Safety Act*.[41]

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[40]   *NSWPD (Hansard)*, 27/10/98, per the Hon J Shaw QC MLC, p 21 (proof).

[41]   SCLJ, *Interim Report*, pp 28-31.

Chapter Four
Recent reforms

4.1 Recent reforms

4.1.1 The current Government has introduced a number of significant reforms in relation to occupational health and safety and has facilitated the development of further reform proposals. This chapter briefly outlines the most important reforms introduced over the last three and half years and the major reform proposals which have been put forward during that time.

4.2 Increased penalties and enforcement activity

4.2.1 In December 1995 the Parliament passed the *WorkCover Legislation Amendment Act 1995*. Although this legislation was primarily concerned with amendments to the *Workers Compensation Act 1987* to address cost problems in the workers compensation scheme, the legislation also introduced some important changes to the *Occupational Health and Safety Act 1983*. Fines for breaches of the Act were effectively doubled, with the maximum fine for workplace safety offences by an employer increased to $500,000 and the maximum fine for a second or further offence increased to $750,000. (These fines have now increased to $550,000 and $825,000 respectively.)

4.2.2 Linked to the increase in fines provided for under the provisions of the *WorkCover Legislation Amendment Act 1995* has been a deliberate Government policy to "vigorously ensure compliance" with the *Occupational Health and Safety Act*. In answer to a parliamentary question about the Government's enforcement policy, the Attorney General and Minister for Industrial Relations, the Hon Jeff Shaw QC MLC, recently said that:

> The Government's policy has been to vigorously ensure compliance with occupational health and safety legislation. It has been encouraging employers and employees to comply with the standards required by occupational health and safety legislation. WorkCover has a compliance strategy that focuses on education and prevention. Prosecution, of course, is the last resort, but it is available to back up the other strategies.

> Between 1 July 1997 and 30 June 1998, 937 prosecutions were completed, with 636 convictions being recorded; and fines imposed by the Chief Industrial Magistrate, the Local Court and the Industrial Commission of New South Wales totalled approximately $3 million. There has been a marked increase in enforcement activity by WorkCover since 1995. Currently, between 70 and 80 matters are completed each month. Successful prosecutions rose from 311 in 1994-95 to 636 in 1997-98. That is a significant lift in the enforcement of prosecutorial policies and in the number of matters dealt with by the courts.

The number of prohibition and improvement notices issued rose from 8,600 in 1994-95 to 13,700 in 1997-98.

WorkCover is developing a compliance and prosecution policy in accordance with recommendation 11 of the Standing Committee on Law and Justice so as to provide transparency and certainty to industry and other stakeholders about WorkCover's compliance and prosecution policies. The policy will address both occupational health and safety and workers compensation compliance services. It will seek also to achieve a balance between WorkCover's responsibility to enforce the legislation and its role to assist industry in injury prevention and management.

The Government's occupational health and safety enforcement strategy has four tiers: first, a strategy of education, advice and persuasion; second, the issuing of improvement notices and prohibition notices; third, the issuing of penalty notices, also known as on-the-spot fines; and, fourth, prosecution. Prosecutions take place whenever there are serious breaches of the legislation. Those include incidents that involve a fatality; offences involving a high risk of fatal or serious injury to a worker; a wilful repetition of an offence; failure to comply with a prohibition notice; or incidents in which inspectors are obstructed from carrying out their duties or exercising their powers under the relevant Act.

Prosecution of more serious matters, such as those involving workplace deaths, is conducted before the Industrial Relations Commission of New South Wales. Less serious breaches are heard before the Chief Industrial Magistrate and in the Local Court.

This Government doubled fines for occupational health and safety breaches, and those fines now stand at $550,000 for a first offence and $825,000 for a repeat offence. The New South Wales on-the-spot fine system is a practical intermediate penalty system. It makes effective use of the existing infringement notices already operated by the police. The immediacy of the penalty has impact and leads to increased attentiveness to safety and improved safety behaviour. Our Government's approach to the application and enforcement of occupational health and safety law has been commended by the Australian Industry Commission.

The Standing Committee on Law and Justice of this House - which has been doing excellent work in this area - examined the New South Wales on-the-spot fine system in the course of its inquiry into workplace safety and has recommended against modification or change of the existing system. The National Health and Safety Commission is currently examining the advantages and the efficacy of the New South Wales fines system to assess its potential as an effective preventive measure capable of being implemented nationally. The study commissioned by the commission has indicated that there exists a broad consensus of opinion that on-the-spot fines operate as an effective preventive measure.[42]

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[42]   *NSWPD (Hansard)*, (LC) 14/10/98 (proof), per the Hon J Shaw QC MLC, p 37.

4.3   Union right of entry

4.3.1   A further change introduced through the *WorkCover Legislation Amendment Act 1995* was the insertion into the *Occupational Health and Safety Act* of new sections 31AF-31AP to allow authorised officers of trade unions to enter workplaces "for the purpose of investigating any suspected breach of the occupational health and safety legislation".[43]   No doubt due to the focus upon the provisions of the *WorkCover Legislation Amendment Act 1995* upon the cost problems in the Workers Compensation scheme, there was no mention during the parliamentary debate on the legislation of either the right of entry provisions or the increased penalties introduced in that legislation.[44]

4.3.2   The provisions of the *Occupational Health and Safety Act* providing a right of entry for authorised trade union officers are similar to provisions in the *Industrial Relations Act 1996*.   In both cases, the right of entry is only available to officers holding appropriate written authority from the Industrial Registrar of the Industrial Relations Commission and this authority must be produced upon request by the occupier.   Entry can only be made to premises which authorised officers have reason to believe is a place of work of their members or persons eligible for membership of their union.   Under s 31AK of the *Occupational Health and Safety Act* the powers available upon entry include: making searches and inspections; taking photographs; requiring the production of records; and taking copies of or extracts from any such records.   Under s 31AN it is an offence to obstruct, hinder, impede, intimidate or threaten an authorised officer, or to unreasonably refuse to comply with a requirement of such an officer.   Comment has been made that the powers of entry provided to authorised union officers correspond to the powers provided to WorkCover inspectors under the Act.   It has therefore been suggested that these provisions of the Act may make authorised union officers into "de facto WorkCover inspectors".

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[43]   *WorkCover Legislation Amendment Act 1995*, Schedule 2.

[44]   *NSWPD (Hansard)*, (LC) 13/12/95, pp 4775-4834; 14/12/95 pp 4991-5012.

> As the OHS rights of entry provisions are relatively new, they have not yet been tested by the courts. However, as many of the rights of entry attaching to WorkCover inspectors now extend to union officers, it appears as though these union officers may become de facto WorkCover inspectors.[45]

4.4   Consolidated regulation and provision for risk assessment regulations

4.4.1   WorkCover NSW is currently developing a new OHS regulation which will consolidate over 40 current workplace health and safety regulations into one document. The new OHS regulation is intended to encourage a systems based risk management approach to OHS, and to promote national consistency in OHS standards. The draft regulation is being developed in close consultation with employer associations and unions. Once finalised, the draft regulation will be released for public comment for a period of three months, accompanied by a regulatory impact statement.

4.4.2   The *Occupational Health and Safety Amendment Act 1997* was primarily concerned with putting in place the necessary legislative framework for the implementation of the forthcoming consolidated OHS Regulation, which is to be accompanied by the repeal of certain prescriptive OHS legislation such as the *Factories Shops and Industries Act 1962*. These provisions have not yet been proclaimed, as the Consolidated Regulation has yet to be made.

4.4.3   The *Occupational Health and Safety Amendment Act 1997* also included the first explicit reference to "risk assessment" in the *Occupational Health and Safety Act* by providing, in section 45 (1A) (a1)-(a2), for regulations to be made requiring a process of hazard identification and risk assessment. An amendment to section 46 provided that undertaking a risk assessment would not in itself provide a defence in a prosecution for a breach of the general duties under the Act, but that a failure to undertake such a risk assessment would be admissible as part of the evidence for a breach.

4.4.4   The 1997 amendments also addressed a problem that had emerged in relation to prosecutions under the Act, to explicitly provide prosecutors with the power to charge multiple breaches of the Act as a single offence.

4.5   Workers Compensation Advisory Council

4.5.1   In June 1998, the NSW Parliament passed the *Workplace Injury Management and Workers Compensation Act 1998*. This Act provided for

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[45]   S Burke, *The Rights of Entry to a Workplace by Union Officials*, Seminar Paper, June 1997, http:www.gadens.com.au/publications/pub30.html.

a substantial overhaul of the workers compensation system, including measures designed to address the funding problems in the scheme (primarily through the introduction of a variety of injury management requirements) and for the introduction of private underwriting by licensed insurers from 1 October 1999.

4.5.2   Of direct consequence from the point of view of OHS, the Act provided for the establishment of a permanent Workers Compensation Advisory Council, consisting of 5 employer representatives, 5 employee representatives, 2 non voting insurer representatives and the General Manager of WorkCover (also non voting). Under section 12 of the Act, the functions of the Advisory Council include:

> to be responsible for the formulation of recommendations to the Minister with respect to the objectives and policy directions of the workers compensation legislation *and the occupational health and safety legislation* [emphasis added]; and

> to be responsible for the formulation of recommendations to the Minister with respect to the amendment or replacement of any such legislation.

4.5.3   The establishment of the permanent Advisory Council, followed the successful operation of the interim advisory council which had achieved consensus on the terms of the *Workplace Injury Management and Workers Compensation Act.* Introducing the legislation, the Attorney General and Minister for Industrial Relations, the Hon Jeff Shaw QC MLC, described the establishment of the Advisory Council as a means of promoting stakeholder ownership of the workers compensation scheme and OHS legislation and policy.

> One of the main proposals is to promote stakeholder control and accountability by establishing a permanent Workers Compensation Advisory Council. The council will have a key advisory role in relation to the ongoing policy direction and review of the scheme, and further recommendations for change. All legislative proposals, including regulation making proposals, will be formulated by the advisory council and recommended to Government.[46]

4.5.4   The establishment of the Interim Advisory Council and, ultimately, a permanent Advisory Council, had been a key recommendation of the Inquiry into Workers Compensation System in NSW, conducted by Mr Richard Grellman, in 1997.[47] The *Grellman Report* identified lack of stakeholder

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[46]   *NSWPD (Hansard)*, (LC) 30/6/98, per the Hon J Shaw QC MLC, p 1.

[47]   R J Grellman, *Inquiry into Workers compensation System in NSW: Final Report*, 15 September 1997 (hereafter *Grellman Report*).

ownership and control as the major weakness in the workers compensation system.

> The main stakeholders of a workers compensation system are the workers and employers. The operation of the system, and changes made to it, directly impact these stakeholders. It was a common concern among workers and employers that fundamental changes to the system were often made without their consultation, despite the impact of such changes. This lack of ownership of the mechanics for achieving the systems' objectives extends to all areas outlined above as weaknesses.[48]

The *Grellman Report* recommended the establishment of the Workers Compensation Advisory Council to address these concerns. The report described the proposed Advisory Council as a "stakeholder driven entity" which "will be empowered to shape the workers compensation system and be responsible for its performance".[49]

4.5.5   The *Workplace Injury Management and Workers Compensation Act 1998* provides for renaming of the Occupational Health Safety and Rehabilitation Council as the Occupational Health and Safety (OHS) Council. Under section 30, the OHS Council is to provide OHS advice to the Workers Compensation Advisory Council in relation to matters referred by the Advisory Council.

4.6   Industry Reference Groups

4.6.1   The *Workplace Injury Management and Workers Compensation Act 1998* also provides for the establishment by the Advisory Council, of a system of Industry Reference Groups. An Industry Reference Group is to consist of equal numbers of employee and employer representatives. The number of members of each Industry Reference Group and its terms of reference are to be determined by the Advisory Council. However, section 33 provides that the functions of an Industry Reference Group may include the following:

> to develop industry specific strategies for: injury prevention; injury management; and the education of and giving of practical advice to workers and employers;
>
> to liaise with the OHS Council; and
>
> to investigate and report to the Advisory Council on specific matters of concern arising under or in connection with any workers compensation legislation.

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[48]   Ibid, p 35.

[49]   Ibid, p 56.

4.6.2   Industry Reference Groups were another recommendation of the *Grellman Report*. The *Grellman Report* described Industry Reference Groups as "smaller versions of the Advisory Council". The *Grellman Report* envisaged that the Industry Reference Groups would conduct detailed investigations into the issues affecting their industry and develop industry specific guidelines regarding injury prevention and injury management.[50]

4.6.3   On 14 October 1998, the Advisory Council agreed to establish 13 Industry Reference Groups, based upon the Australian and New Zealand Standard Industrial Classification (ANZSIC). These groups are to cover the following industry groups:

- rural;
- mining;
- consumer manufacturing;
- retail;
- consumer services;
- government administration and education;
- construction;
- industrial manufacturing;
- wholesale;
- transport and storage;
- business services;
- utilities; and
- health and community services.

A detailed outline of the structure of the Industry Reference Groups, including subdivisions, is reproduced in Appendix Four. The Advisory Council has recently invited unions and industry associations to nominate representatives to participate on the Industry Reference Groups.

4.7   Community awareness campaign

4.7.1   The recommendations contained in the Committee's *Interim Report* of December 1997 are discussed in some detail in Chapter Five. As outlined in that chapter, although the Government has been giving active consideration to the Committee's recommendations, few of them have yet been implemented, and there has not yet been any amending legislation introduced in response to those recommendations. The most visible response which the Government has made to the Committee's *Interim Report*, and which has taken the form of a major new initiative, has been the implementation of Recommendation Nine:

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[50]   Ibid, p 56.

> The Committee recommends that the WorkCover Authority sponsor a hard hitting publicity campaign, along the lines of the campaign that has been run by the Victorian WorkCover Authority, to raise community awareness of workplace safety.
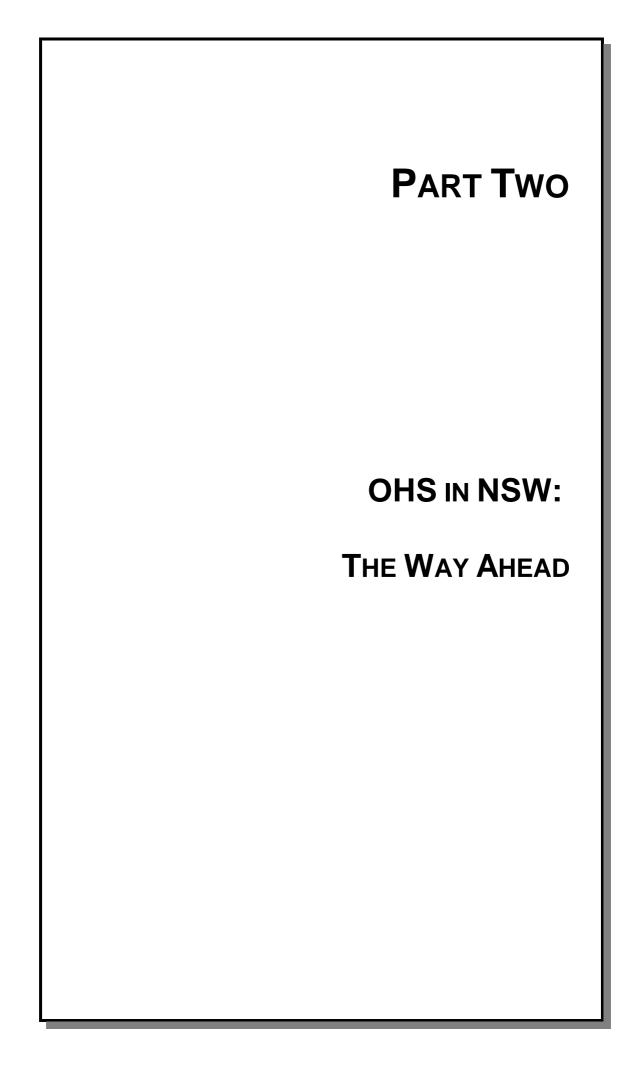
4.7.2   On 30 August 1998 WorkCover NSW commenced a major community awareness campaign. The rationale behind the campaign was outlined by the Attorney General and Minister for Industrial Relations, the Hon Jeff Shaw QC MLC in answer to a parliamentary question from the Committee Chairman:

> The Hon. B. H. Vaughan has referred to the workplace safety awareness campaign, which began on 30 August with a television commercial depicting ordinary people saying goodbye to their loved ones before they leave for work. The advertisement, which runs for three weeks, confronts viewers with the grim facts that the workplace kills more people than die on the roads, and that about 60,000 serious work injuries occur every year in New South Wales. It is backed by a series of radio, press and billboard advertisements which, in turn, are supported by a hotline to deliver safety information to callers. New South Wales workers are killed, injured or made ill by unsafe work practices, a fact that this Government and, I imagine, all members of this House consider unacceptable.
>
> The cost of the campaign - approximately $1 million for the safety awareness stage - is money well spent when workers' lives are at stake. A cost-benefit analysis conducted by WorkCover found that a 1 per cent reduction in injury and illness in the New South Wales workplace would result in a $23.5 million saving in direct costs, and a $79.4 million saving in gross costs. The first phase of the campaign is to raise awareness in the community of the gravity of workplace injury and illness. The second phase will concentrate on the safety responsibilities of everyone in the workplace and on what can be done to make workplaces safer. This publicity campaign is a tripartite response to the mounting toll of workplace casualties. The pressing need for such a campaign was identified by the bipartisan upper House Standing Committee on Law and Justice in its interim report last December.
>
> Peak employer groups and unions, and leading occupational health and safety organisations have thrown their full support behind us in our attempt to reduce the toll. New South Wales Labour Council Secretary, Michael Costa, and Greg Patterson, General Manager, Safety, Australian Business Limited, both voiced their support at the launch of the campaign on 27 August this year. Further aspects of the campaign will extend to a direct mail-out targeting the high-risk industries and industry seminars for both union and employer groups. I am sure the Government has the support of every member of this House in its objective to cut the workplace toll and bring New South Wales workers home safer.[51]

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[51]   *NSWPD (Hansard)*, (LC) 8/9/98, per the Hon J Shaw QC MLC, p 8.

PART TWO

OHS IN NSW:

THE WAY AHEAD

Chapter Five
An Appropriate Legislative Framework

5.1   Questions posed in the Committee's *Issues Paper*

5.1.1   The Committee's February 1998 *Issues Paper* included a brief discussion of the Robens based legislative framework and alternative legislative models. It also briefly discussed some of the major changes in the labour market and the nature of work that have occurred over the last 20 years. Questions 6, 7 and 8 posed in the Issues Paper raised fundamental questions about the implications of these changes for the regulation of occupational health and safety.

6. Does the current Robens based Occupational Health and Safety legislation provide an appropriate legislative framework for the regulation of workplace safety into the twenty first century? To what extent does European legislation promoting a systems approach to workplace safety provide a model for future developments in the Australian legislative framework?

7. How can the current legislative framework be modified to meet the challenges posed by the changing nature of the workplace?

8. How can the current legislative framework be modified to better address the particular occupational health and safety needs of people with disabilities, women, people from non-English speaking backgrounds and Aborigines and Torres Strait Islanders?

5.1.2   As pointed out by witnesses during the course of evidence, these questions are of such importance that they need to be addressed before any of the other matters raised in the issues paper can be rationally dealt with.[52] That point is taken and is reflected in the structure of this report.[53]

5.2   Development of the current legislative framework

5.2.1   The background to the development of workplace safety regulation in NSW is summarised succinctly in the McCallum Report. The McCallum Report referred to key milestones in this development as the report of the 1972

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[52]   *Evidence*, 26/8/98, per Mr T Hannan, p 29.

[53]   The reason for placing these questions as numbers 6, 7 & 8 in the *Issues Paper* was related to the order of the paragraphs in the Committee's terms of reference. This report, whilst addressing each of the paragraphs in the terms of reference, does so in a different [and in the Committee's view more coherent] order.

report of the Robens Committee on OHS Regulation in the United Kingdom[54] and the 1981 Williams report on OHS regulation in NSW.[55]

> The NSW *Occupational Health and Safety Act 1983* was one of the first measures in the cluster of modern Robens style legislation in Australia. This legislation is known as 'Robens style legislation' for ideas that underpinned this new wave of occupational health and safety statutes which had their genesis in the United Kingdom report into occupational health and safety which was chaired by Lord Robens. In brief, this philosophy was aimed at prevention. Rather than relying solely on prescriptive legislation, broad general duties would be placed on those at work and upon suppliers and manufacturers of equipment, to ensure that the workplace was safe and free from risk. This has been described as self regulation... A further element in this philosophical mix was an emphasis on employer and employee consultation as a means of improving safety prevention at the workplace. When the *Occupational Health and Safety Act 1983* was enacted by the NSW Parliament it more fully embraced the Robens philosophy than did any other Australian statute....
>
> In 1979 the State Government appointed former Chief Industrial Magistrate TG Williams to examine the state of safety law in NSW. As Mr Williams pointed out in his report, the old prescriptive legislation [then in force] was narrow in its focus. It covered factories, mines and construction sites etc, but the office, the school, the hospital and the farm were largely unregulated by this form of legislation...
>
> The Williams report made it clear that the older prescriptive legislation had not adequately prevented industrial injury and ill health...The Williams report specifically rejected the 'apathy' explanation that had been put forward a decade before by the Robens Committee. Williams saw the rise in death and injury which had occurred in the 1970's as being amenable to improvement through management/labour co-operation, just as the Robens Committee had recommended. He however strongly asserted that the right to a safe and healthy workplace was a non-negotiable legal right which should not be the subject of collective bargaining. In asserting that these rights to a safe and healthy workplace should be enjoyed by everyone at the workplace he also recommended that the legislation (somewhat unusually) bind the Crown. He also recommended the establishment of joint committees in workplaces of 50 or more employees and that worker representatives be elected by all workers. He also implied the right to refuse to perform unsafe or unhealthy work. Not all of these recommendations saw the light of day in the eventual legislation.[56]

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[54]   Robens Committee (Committee on Safety and Health and Work), *Report of the Committee on Safety and Health at Work*, HMSO, London, 1972.

[55]   Williams T G, *Report of Commission of Inquiry into Occupational Health and Safety*, 1981.

[56]   *McCallum Report*, pp 19-21. The *McCallum Report* also includes (as an appendix) a comparison of the recommendations contained in the Robens and Williams reports.

5.2.2   When the Occupational Health and Safety Bill was introduced into the NSW Parliament in December 1982, the Minister for Industrial Relations said that for the first time in any Australian State the Bill would provide coverage for all workplaces under a single piece of legislation. The Minister emphasised the tripartite structures provided for in the legislation, including the establishment of the Occupational Health, Safety and Rehabilitation Council and the provision for the establishment of OHS committees in workplaces, together with the general duties imposed upon employers, employees and manufacturers and suppliers of plant and equipment.[57] The Bill attracted some controversy. The main areas of contention involved the provision for inspectors to be able to impose on-the-spot fines and the provision for OHS committees to be established in workplaces with twenty employees, as opposed to the recommendation in the Williams Report for such committees to be able to be established in workplaces with 50 employees.[58]

5.2.3   The key features of the *Occupational Health and Safety Act 1983* were succinctly summarised by Ms Wendy Thompson, Manager of the OHS Prosecutions Branch of WorkCover NSW, before the Committee on 23 May 1997. Ms Thompson described the way in which the NSW legislation applied the Robens philosophy:

> New South wales was the first State to enact this type of legislation. It was radically different from all the legislation that had preceded its inception. The previous legislation had been what is called prescriptive legislation; that is, it set down, in very precise terms, what the government believed was required to make a workplace safe. It covered things such as ventilation, the height of ceilings, and the type of guarding that had to be provided on machinery. Clearly, it is not possible to devise legislation that can cover every type of equipment and every type of workplace.
>
> The Robens philosophy was based on the viewpoint that it is not government's role to run that workplace but it is the government's role to enforce legislation. We must have legislation that gives the capacity to those who are in control of workplaces to go ahead and organise that workplace so that safety is ensured. The basis of the New South Wales Act is what is called a general duty of care framework. That is, the legislation does not try to prescribe in great detail how to make a workplace safe - although there is guidance, regulations and codes of practice - but the legislation says to the employer or to the supplier: you are providing this workplace or this plant for use of work; you satisfy yourself that it is safe.
>
> The Act allows such persons to do this in any number of ways, hence the flexibility. There is no need for government to spell out and have numerous provisions which you, the employer or supplier, must be familiar with and acquaint themselves with in order to fulfil the duty of care obligations.

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[57]   *NSWPD (Hansard),* (LA) 1/12/82, per the Hon P Hills MP, pp 3683-3688.

[58]   *NSWPD (Hansard),* (LA) 16/3/83, per Mr I Armstrong MP, pp 4663 - 4666.

It is a broad duty of care. Its basis is formed in the common law duty of care, i.e. to take reasonable care for others. The duty has been codified in the OHS Act, and it has also been elevated. It has created an even stronger duty in the sense that it is now an absolute duty, subject only to the defences available under section 53 of the Act.

The Act is the principal Act for safely legislation in New South Wales. It is supported by regulations and by codes of practice. For the non lawyers, the codes of practice are not legally binding unless they have been called up within a regulation. The Act was introduced to overcome the problems of prescriptive legislation. It reflects the philosophy of the Robens report and it codifies and elevates the common law duties.

Like the Robens philosophy it is based on the concept of effective self-regulation; recognises that there was a need to remove excessive and complex regulations; that there was a need to keep pace with changes in society; that there was a need for greater involvement and ownership by employers, and persons at place of work; and the need for one single Act that would be the head reference Act for all of the other legislation.

The Act broadened the scope of safety legislation beyond that of factories and shops, traditional places of work, and encompassed every workplace in New South Wales.[59]

5.3   Meeting the OHS challenges of changes in the workplace

5.3.1   As outlined in Chapter Three, the Committee has been greatly assisted in its consideration of the OHS implications of changes in the workplace by the submissions and evidence of two eminent scholars in this field, Professor Michael Quinlan and Professor Ron McCallum. Set out below are some of the suggestions which have been made by Professor Quinlan and Professor McCallum to address these issues.

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[59]   Round Table Meeting with McCallum Panel of Review, 23/5/97, pp 5-6.

5.3.2   Professor Quinlan's original submission described the major changes in the workplace over the last 20 years and their OHS implications. In order to address these issues Professor Quinlan made 7 specific recommendations:

1. That an integrated systems approach be promoted in relation to the management of OHS.

2. Introduce the position of Occupational Health and Safety Officer.

3. Introduce tripartite industry based OHS Committees.

4. Introduce the position of Occupational Health and Safety Employee representative.

5. Better address OHS challenges arising in the labour market and workplace, including the OHS problems raised by outsourcing/subcontracting.

6. Better address OHS problems of women workers.

7. Strengthen and revise enforcement provisions and practices.[60]

5.3.3   As outlined below, a number of these recommendations, including the establishment of positions of health and safety representative and health and safety officer, have already been addressed in the Committee's *Interim Report* of December 1997. Furthermore, as outlined in Chapter Four, the recommendation for the establishment of industry committees has been addressed through the recent establishment of Industry Reference Groups under the *Workplace Injury Management and Workers Compensation Act 1998*. Some of Professor Quinlan's other recommendations, including those for an integrated approach to the management of OHS and for revised enforcement practices are addressed in separate chapters.

5.3.4   In his second submission, Professor Quinlan specifically responded to the question posed in the Committee's February 1998 Issues paper concerning the continued appropriateness of the Robens legislative framework. Professor Quinlan commended the Committee's previous recommendations concerning consultation and noted the usefulness of the move to establish Industry Reference Groups. In relation to the adoption of a systems based approach and revised enforcement practices, he suggested that the implementation of these recommendations would require more in the way of revised strategies within WorkCover than legislative change. He also noted

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[60]   *Submission*, 5/5/97, Professor M Quinlan, p 16.

the possible role of guidance material, regulations or codes of practice to address the special needs of temporary/casual workers and young workers.

> In my view the current OHS Act provides a generally suitable framework to take NSW into the next century. Some modifications are necessary. A number of existing recommendations of the Committee, such as the introduction of health and safety representatives, already contribute towards addressing deficiencies in the present law. They would also assist, in my view, in the implementation of a systems approach. For example, health and safety representatives can play a crucial role in systems monitoring and independently vetting whether the formal procedures are actually being implemented. As such, they will assist WorkCover in monitoring. Some further modifications in legislation may be required in terms of implementing systems control. For example, the general duties provisions and the rights/obligations/functions of various interested parties (committees, representatives etc) might be amended or supplemented to make a more explicit link with systems control instruments...

> I suspect the promotion of a systems approach will require less in the way of legislative change (general duty provisions already refer to safe systems of work) than it will require in terms of implementing a change in strategy within WorkCover. That is, the major change will occur in terms of how the objectives of the present legislation are implemented. This will incorporate compliance and inspectorial regimes (and retrained inspectors), as well as re-fashioned documents and support programs to name a few of the most obvious features. On the positive side the development of tripartite industry committees by WorkCover can be seen as a useful step in terms of helping putting a systems approach on a firm footing by enabling the parties to contribute to the process.[61]

5.3.5   When Professor Ron McCallum appeared before the Committee in August 1998 he tabled and spoke to a recent report published by the Institute of Employment Rights, a think tank with strong links to the trade union movement in the United Kingdom, entitled *Robens revisited*.[62] The *Robens revisited* report has been issued as a discussion paper to commence the Institute's project to review the *Health and Safety at Work etc Act 1974.* A copy of this report is reproduced as Appendix Two to this report. During the recent study tour to Europe, the delegation met with one of the authors of this report, together with other consultants to the Institute of Employment Rights who are involved in the project to review the UK's OHS legislation.[63]

5.3.6   The *Robens revisited* report discusses changes in the workplace which have occurred in the United Kingdom over the last 20 years, similar to those

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[61]   *Submission*, 5/5/98, Professor M Quinlan, pp 6-7.

[62]   D Walters & P James, *Robens revisited: The case for a review of occupational health and safety legislation*, Institute of Employment Rights, London, June 1998.

[63]   *Report on European Study Tour, July 1998*, reproduced as Appendix One, pp 55-57.

discussed in this chapter. As well as discussing the OHS implications of these changes, the *Robens revisited* report argues that these changes have undermined the assumptions on which the *Robens report* and the *Health and Safety at Work etc Act* were based. Professor McCallum explained the argument and its application to NSW:

> If I may, I would like to take you back to 1972 in England when the Robens Committee met under the chair of Lord Robens and drafted its report. It was 26 years ago and much has changed since then. The key findings or key opinion of the Robens report was that accidents were very much caused by workplace apathy by employees and employers and by persons in control of workplaces. The recipe to address apathy was to ensure that responsibility for safety matters was placed in the hands of employees and employers at the workplace. The Robens report recommended the establishment of consultative mechanisms, that is safety and health representatives and safety committees. It also recommended the use of inspectors and a gradated system of penalties from warnings, improvement notices, prohibition notices, with the last resort being prosecution. It sought to simplify the plethora of prescriptive legislation by placing the broad duties upon employees, employers, manufacturers and persons in control of workplaces.
>
> It operated in a very stable environment in Britain, where the work force was overwhelmingly full-time, where people were in jobs for a lengthy amount of time and where workplaces were relatively stable. It was based upon unspoken assumptions that there would be a vigorous trade union movement covering almost half the work force and that this union movement would play its role in the consultative process. Another assumption was that its machinery, principally the health and safety executive, would be funded amply by government to undertake training in relation to workplace consultation and to undertake surveys in relation to safety and health. All these assumptions have slid away with the changes that have occurred in the United Kingdom over the past 26 years.
>
> If I may turn to New South Wales, as the Committee would be aware it was the report by Magistrate Williams, who sat from 1979 to 1981, which was the genesis of our 1983 Act. In his report Magistrate Williams examines the Robens philosophy and, with great respect to him, although his report lacks the clarity of the Robens report, it is fair to conclude that he adopted in his report the essence of the Robens report. New South Wales in 1981 was somewhat akin to Britain in the 1970s: a strong and vigorous trade union movement, a highly-regulated labour market, large-scale employment, full-time employment, and governments with deeper pockets than they have today. Out of the Robens report in England came the Safety and *Health at Work, Et Cetera Act*—it really does have "et cetera" in the title—and the *Occupational Health and Safety Act 1983* of New South Wales. Both these pieces of legislation were drafted and enacted upon these assumptions. I suggest to you this morning that these assumptions are no longer pertinent and that we have to rethink our Robens approach for the twenty-first century.
>
> The health and safety executive in Britain, as with other government bodies, is no longer well funded. The labour market is highly deregulated, part-time and casual employment is on the increase, and there has been what might be

called vertical disintegration, that is, large corporations outsourcing and contracting out many services. The trade union movement has declined in importance and, as I understand the report, accident rates have increased. Therefore, in such a changed environment it is harder to make the assumption that workplaces will remain stable and that long-term consultative processes can be in place.[64]

5.3.7   Professor McCallum then went on to recommend two key responses to the challenges posed by the changes which have occurred in the workplace over the last 20 years. These responses involved: firstly, new and enhanced opportunities for consultation in the workplace; and, secondly, strengthened Codes of Practice.

How best can we ensure a consultative mechanism operates with small employers? How best can we ensure that small employers are attuned to safety and health issues? We ought to be thinking of a broad and multifaceted approach to occupational health and safety. The Government needs to legislate promptly for committees in all workplaces whatever the size. The Government needs to legislate promptly to have elected safety and health representatives with proper powers. The Government needs to have an education campaign to tell employees their rights and that they are entitled to elect safety and health representatives.

Thought could be given in some industry groupings for the operation of what might be called regional safety and health representatives. As I understand it, they operate in fragmented industrial sectors in Scandinavia and Europe. The issue of regional safety and health representatives is discussed in the Institute of Employment Rights report. We must not relax on the setting up of prescriptive standards. The tendency is to say, "Let's attune everybody to safety management systems and to self-auditing", but given the fragmentation of the work force, it is really only larger employers who can do this properly. In earlier questions the Committee asked how small business could be attuned to safety management systems. Work can be done in this area and I know Professor Quinlan, who is familiar to the Committee, has undertaken work on this issue. If we are to operate a consultative mechanism and have risk management, we still need prescriptive standards. My experience of small employers, and they are those employing 10 or less, is that in the main they are genuinely concerned about safety and health but do not know what to do. They are not sure that a safety and health committee of a work force of six or seven will work properly. They have not thought about safety and health representatives. They just want to be told what to do.

I am not suggesting that we go back to the old factory legislation, but we must beef up codes of practice. As I read chapter 8 of the interim report, the Committee states that Parliament should have more control over the processing of codes of practice. In other words, oversighting those issues. We need well publicised codes of practice on what are best industry standards to make workplaces safe and those codes of practice must be widely publicised. We need codes of practice on what is best practice for

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[64]   *Evidence*, 26/8/98, Professor R McCallum, pp 14-15.

workplace consultation for small businesses. I cannot stress strongly enough that with the changes in our labour force and the fragmentation of our businesses we cannot rely upon the old assumptions and we must think more about gentle prescription and beefing up our consultative mechanisms.[65]

5.3.8   Professor McCallum suggested that these recommendations were interrelated. For example, he suggested that a Code of Practice should be developed to introduce a certain degree of prescription in relation to consultation, to ensure that consultative mechanisms reflected the make up of a workplace.

It is important that the legislation be inclusive and that the objects be modified so that all groups know that the *Occupational Health and Safety Act* is for them. Thought needs to be given, perhaps in a code of practice on consultation, to make sure that safety and health committees mirror the work force. In other words, we do not want a work force with 50 per cent female and 50 per cent male having no female representatives on the committee because that is the male sort of thing to do.

If we are to have workplace consultation, it is very important that those consulting from the employee side mirror the gender and physical make-up of the work force. That can best be done through codes of practice. I am a great believer in codes of practice. Many of the problems evident with the changing nature of the work force can be addressed through the use of codes of practice...

For example, if we have an establishment that has 20 per cent of its employees working part time, then 20 per cent of the representation on the committee should be part time. I do not believe we should go back and say we ought to have piles of prescriptive legislation. I do not think that got us very far in the nineteenth century and the first half of the twentieth century. But I think that employers, particularly in smaller businesses, and employees need guidance in relation to the general duties. I think that guidance is best given by well-publicised codes of practice which are under the control of Parliament, so that it can be made clear what is required.

That is why I would like to see codes of practice on consultation. I would also like to see safety officers—which are officers in Queensland companies—used in New South Wales as part of the consultative process. I would like to see regional consultative mechanisms for industries that require that. I am still a believer in persuasion with gentle regulation. What the Walters-James document has impressed upon me, and has, if you like, triggered what has been going on in my mind, and no doubt Committee members' minds, is that we must address our consultative mechanisms to the changes in our work force. If we can do that, and write the Act in a clear and readable manner, and back it up with codes of practice, I think we will go a long way. I do not want

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[65]   *Evidence*, 26/8/98, Professor R McCallum, pp 16-17.

to give up on Robens; I just want to recognise that the world has changed and to simply take account of those changes.[66]

5.3.9   In relation to the role of Codes of Practice, the report on the overseas study tour in July 1998, which is reproduced as Appendix One, refers briefly to an interesting recent development in the United Kingdom. During 1995 and 1996 the Health and Safety Commission (HSC) conducted a review of the role and status of Codes of Practice.[67] One of the results of this review was a decision to include a new section at the front of each new Approved Code of Practice, making clear that those who comply with the code will be doing enough to comply with the law in respect of the specific matters on which the code gives advice. The wording of the paragraph is set out below:

> This code has been approved by the Health and Safety Commission, with the consent of the Secretary of State. It gives practical advice on how to comply with the law. *If you follow the advice you will be doing enough to comply with the law in respect of those specific matters on which the code gives advice.* You may use alternative methods to those set out in the code in order to comply with the law. However, the code has a special legal status. If you are prosecuted for breach of the health and safety law, and it is proved that you did not follow the relevant provisions of the code, you will need to show that you have complied with the law in some other way or a court will find you at fault. (Emphasis added)[68]

5.3.10   *The Committee is of the view that, if Codes of Practice are to be used as an effective form of "gentle regulation", there is a need to clarify and simplify the rules in relation to their status. If employers adopting a Code of Practice were deemed to comply with the relevant law, this would enable compliance with Codes of Practice to be used as a defence by employers in prosecutions, just as non-compliance with Codes of Practice may now be used by the prosecution as evidence of a failure to comply with the law. Surely this would make the use of Codes of Practice more attractive to industry, as well as providing for greater clarity and simplicity in the law.*

5.4   Meeting the OHS needs of vulnerable workers

5.4.1   As noted above, the Committee's February 1998 *Issues Paper* drew attention to the particular occupational health and safety needs of a range of vulnerable workers, including Aborigines and Torres Strait Islanders, women

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[66]   Ibid, pp 17, 21.

[67]   Health and Safety Commission (HSC), *The role and status of Approved Codes of Practice*, consultative document, 1995.

[68]   HSC, *Commission Completes Role and Status Review of Approved Codes of practice*, News Release, 22/2/96.

and people from a non-English speaking background. The Committee took evidence in relation to each of these groups. The Committee also took evidence in relation to the OHS needs of young workers. This evidence is briefly summarised below.

5.4.2   In relation to the OHS needs of **Aborigines and Torres Strait Islanders**, the Committee took evidence from two leading researchers. Dr Claire Mayhew, a Senior Research Scientist with the National Occupational Health and Safety Commission (NOHSC), spoke about her May 1996 report on a study of the OHS status of Aborigines and Torres Strait Islanders in Queensland.[69] Dr Mayhew emphasised that this study, the first ever undertaken in relation to the OHS status of Aborigines and Torres Strait Islanders, was a pilot study designed to provide baseline information. Dr Mayhew said that data showed two groups of indigenous workers: firstly, a very large proportion in labouring jobs; and, secondly, a smaller group in government employment, particularly in welfare related tasks or acting as liaison officers (such as police liaison officers). The major conclusions drawn from the data on injuries were that there was an excess of musculo-skeletal injuries for those involved in labouring work, and an excess of stress amongst welfare workers. The most extreme examples of stress were in the group of police liaison officers.[70] In answer to questions from the Committee, Dr Mayhew suggested that the major OHS need of indigenous workers was for properly targeted information, which communicated its message effectively and also dealt with specific hazards in the industries in which indigenous Australians most frequently work.

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[69]   C Mayhew & D Conroy, *Aboriginal and Torres Strait Islander Occupational health and Safety: A Pilot Study of Hazard Exposures, Patterns of Work-Related Injury and Illness, OHS Information Provision, and Injury Reporting Behaviours in Queensland*, NOHSC, May 1996.

[70]   *Evidence*, 17/8/98, Dr C Mayhew, pp 23-24.

> Dr MAYHEW: If I was to make some workable recommendations, I think the process of informing people is quite different, sometimes, for indigenous workers. For example, amongst the people we interviewed in the course of this study there were a few that had never been to school. Therefore, providing these people with written information is hardly going to be useful in any sense at all. Also, the Aboriginal and Torres Strait Islander populations are not homogenous, they are quite distinct groups, and communication is quite different. For example, face-to-face communication is preferred to written communication. The indigenous population, as well, may not read the regular newspapers to the extent that other workers do. However, they would read things like the Koori Mail, an indigenous newspaper. I think it is produced in Armidale. At any rate, they read the Koori Mail on a fairly regular basis and it is fairly widespread. However, I do not believe that is an instrument that has been used for OHS information dissemination.
>
> I think the process used to inform indigenous workers is quite different from that used to inform other people, other Australian workers as a whole. Because of the concentration of indigenous workers in particular occupations with quite distinct hazard and risk exposures, there is a need to provide information tightly targeted. For example, indigenous workers inland, Aboriginal workers inland—in Queensland in this case—may be working in the forestry industry or the cattle industry, where manual handling is a distinct risk for them. Tightly targeting information to cattle workers on manual handling is useful, as is informing forestry workers of risks from using chainsaws. Because of the variable literacy levels it is not just written communication that is needed.[71]

5.4.3   At Dr Mayhew's suggestion, the Committee Secretariat made contact with Dr Claire Williams of Flinders University. Dr Williams is conducting a pilot study of the OHS status of aboriginal health workers. Her research supports Dr Mayhew's findings of significant levels of stress experienced by aboriginal liaison officers. Dr Williams has deployed the concept of "emotional labour" to the study of aboriginal health workers. Dr Williams has commented that:

> Preliminary findings suggest that the decision to deploy the concept of emotional labour in relation to Aboriginal employees in caring and liaison positions is highly relevant to the occupational health and safety profile of this group. It also allows consideration not only of tensions arising from employment, but also the way these tensions are less likely to be dispelled because Aboriginal people in these positions are asked to continue with similar work in an unpaid capacity in the community.[72]

5.4.4   Dr Peggy Trompf, Director of the Workers Health Centre, also gave evidence in relation to the OHS needs of Aborigines and Torres Strait

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[71]   Ibid, pp 25-26.

[72]   C Williams & W Thorpe, *Visible and Invisible: The Work of Aborigines, Occupational Health and Safety and Emotional Labour*, Australian Research Council grant application 1999, p 9.

Islanders. Dr Trompf's evidence supported the conclusions of Dr Mayhew's pilot study, referred to above. Dr Trompf pointed out that historically indigenous workers have been "situated in a context of exploitation, marginalisation and racism". Dr Trompf referred some recent improvements in the working conditions of indigenous, largely brought about through the development of industrial awards which included specific self-determination clauses. However, she painted a picture of indigenous workers facing significant OHS problems, both from marginal employment in hazardous industries and stress in health-related occupations.

> Indigenous workers are strongly represented in hazardous industries such as agriculture, coalmining, abattoirs, water supply, road and bridge construction, rail transport, as well as in the community services in welfare, health services and other community organisations, accommodation services, parks and wildlife areas. Many of these occupational categories are in the high-risk groups for occupational injury and disease, such as zoonoses or animal-borne diseases in the meat and pastoral industries, such as abattoirs; toxic chemical exposure in the agricultural sectors; musculoskeletal injury, deafness and high mortality rates in the mining industry; musculoskeletal injuries in municipal shire council workers; overuse syndrome in clerical workers; and burnout and stress-related illness in community sector workers...

> One of the occupational health and safety problems that indigenous workers in the health service area emphasise is that of occupational stress. I will just give some examples of that. It must be remembered that Aboriginal workers are usually on call 24 hours a day. They are pressured by their own communities and by non-indigenous communities. Workers are called on to not only do their job but to act as spokespersons, give expert advice and opinions, give guest lectures, sit on committees and panels and so on, and the rate of burnout is high. Often the working environment is poor with inadequate equipment and lack of ergonomic furniture...

> One Aboriginal health worker [has told that] health authorities often assume that because she is Aboriginal she is automatically able to relate to and care for all Aboriginal people, regardless of their medical needs, but government service providers feel that by employing one Aboriginal worker they are adequately addressing the needs of Aboriginal people in isolated areas. Evidence from Aboriginal people working in a range of community organisations suggest that prejudice, power imbalance, entrenched racism, poor training and unreasonably high expectations of employers—and as mentioned in the case of health workers, of clients, their families and the wider non-indigenous community—contribute greatly to occupational stress.[73]

5.4.5   Dr Trompf made a number of recommendations to ensure the OHS needs of indigenous workers are more adequately met. She suggested that the current definition of employees in the *Occupational Health and Safety Act* may not be broad enough to cater for the OHS needs of indigenous people "who are officially employed [but] may in fact be employed in the traditional

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[73]   *Evidence*, 17/8/98, Dr P Trompf, pp 29-31.

sense, in a cultural sense, and ... work as volunteers". She also called for workers compensation procedures to be made more user friendly for indigenous people, for employers such as the Health Department to take greater responsibility for the OHS needs of indigenous workers and for unions to be more vigilant about the OHS needs of indigenous workers.[74]

5.4.6   In relation to the occupational health and safety needs of **women**, the Committee received evidence from officers of WorkCover NSW. They spoke briefly to a WorkCover NSW report which examined gender differences in the OHS experiences of men and women as demonstrated by workers compensation data.[75] The findings of this report were summarised as follows:

> Based on workers compensation data, men are significantly more likely than women to be injured or made ill by the work that they do. This difference largely arises because of the differences in the type of work they do, not because of any particular biological difference. When men and women do the same type of work the gap between their injury and illness reporting rate narrows. While the rate of injury to women is much lower than men, the severity of injury, as measured by the duration of absence from work, is consistently higher for women than men. A much higher proportion of women than men still occupy part-time, casual and other non-permanent jobs.[76]

5.4.7   The WorkCover NSW officers referred to a number of recent WorkCover initiatives designed to better address the OHS needs of women workers, including outcomes from the Back watch program. One example that was provided was a cost-benefit analysis made available to cleaning contractors which demonstrates the financial savings able to be achieved through the use of more appropriate cleaning equipment.[77] Other examples provided were the funding of research projects with a particular focus on particular OHS issues faced by women workers and the development of the industry team approach, as trialed with the health and community services sector. However, despite the efforts which WorkCover is making to better address the OHS needs of women workers, it was acknowledged that changes in the workplace, such as the increase in casual work and the introduction of old fashioned work practices in "call centres" were posing serious challenges.

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[74]   Ibid, pp 29, 32.

[75]   WorkCover NSW, *Gender differences in the occupational health and safety experiences of NSW workers*, Data Analysis and Research Unit, February 1998.

[76]   *Evidence*, 17/8/98, Ms A Gardiner, p 37.

[77]   *Exhibit WS 98/3*, "Prevention of Back Injuries - Cost Benefit Analysis Project", document tabled by Ms A Gardiner, 17/8/98.

> Whilst WorkCover is moving towards a reduction of work-related injury and illness in female workers, several factors are against us, not the least being the rapidly changing nature of the workplace. The fact that so many people are now casual employees is having a big impact on OH and S problems. Women represent the majority of workers in that area. When a woman is employed on a day-to-day basis by a labour hire company that employs all the staff for the particular industry that she works in she is not likely to complain about occupational health and safety conditions or even submit a workers comp claim unless she has a severe injury, because she would know that if she did so she would never be called back to work by that labour hire company.
>
> Another unsettling change in the workplace in New South Wales is that communication companies, particularly American-owned ones, are introducing work practices that have not been commonplace in New South Wales for a long time. For example, we have had complaints that some of the companies that provide paging services require the women to key in for several hours without a break. The workers are subject to quotas on the number of calls they take and the key strokes per hour. These practices were virtually wiped out in most New South Wales workplaces 10 years ago. It was made clear to employers—largely by occupational health nurses, I might add—that this type of activity would lead to claims for occupational overuse syndrome, or RSI as it was known then.[78]

5.4.8   The Committee received a brief submission from the Hon Faye Lo Po MP, Minister for Community Services, which addressed the particular OHS needs of women.   The submission referred to the under-reporting of workplace injuries by women, and the tendency for women to remain at work with muscular-skeletal conditions, thereby increasing the severity of those injuries.   The submission also referred to the stress experienced by women seeking to balance work and family needs, particularly in a climate of longer hours and work intensification.   The submission made a number of recommendations aimed at addressing the particular OHS needs of women. These include:

- the establishment of a reference group to investigate strategies arising from the results of the WorkCover study on gender differences in OHS referred to above;

- the establishment of a specific women's unit within WorkCover and identification of a significant number of positions in the WorkCover inspectorate to be filled by women;

- ensuring appropriate OHS training for temporary, casual, shift and part-time workers, including reference to the range of injuries experienced by women; and

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[78]   *Evidence*, 17/8/98, Ms A Gardiner, p 38.

- including outworkers in the definition of employees under the Act.[79]

5.4.9   The Committee received evidence in relation to the occupational health and safety needs of women workers from a **non English speaking background** from representatives of Women's Health in Industry. The Committee was given a picture of the nature of the work often undertaken by women from a non English speaking background who are employed in blue collar occupations. The major OHS needs of these workers were described as: musculo-skeletal problems; repetitive strain injuries; and stress.

> We believe that the most common causes for work-related injuries and illnesses among non-English speaking background women are for those concentrated in labour-intensive jobs, such as processing and assembly work, textile, clothing and footwear, laundry, catering services at hospitals, cleaning and related work.
>
> Often the emphasis in those jobs is placed on the quantity of work undertaken. The tasks performed are physically demanding, repetitive and may involve rigid postures, twisting with the wrists or holding things. Rest breaks in workplaces in which those women are concentrated are inadequate and very short. The kinds of activities undertaken may include lifting or lowering loads, carrying, stacking, pushing, pulling, rolling, sliding and the wheeling of loads, the operation of levers and other mechanical devices, the use of solvents, exposure to excessive levels of noise, excessive heat or cold, exposure to microbiological hazards, for example, by laundry workers. All those factors are often aggravated by the stress levels that women work under.
>
> Stress is caused by production demands—because this type of work is based on production—harassment and intimidation, fear of dismissal, casual employment status and often racist attitudes of co-workers and employers. Stress is also caused by boring tasks that women have to perform as well as language barriers. Even in 1998 there are workplaces where women who speak the same language are placed at different work stations so they cannot talk to each other. They are isolated and cannot communicate with the worker next to them. Stress is also experienced by those who have overseas qualifications that are not recognised and by having to take jobs that they know they will never get out of. This amounts to the worker suffering heavy stress and mental problems.[80]

5.4.10   The major recommendation from the representatives of Women's Health in Industry centred around improving workplace consultation, through making OHS committees mandatory and providing for the establishment of positions of health and safety representatives. Community newspapers and radio

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[79]   *Submission*, 27/10/98, The Hon F Lo Po MP, pp 2-3.

[80]   *Evidence*, 17/8/98, Ms A Martell, p 55.

could then carry advertising in community languages advising workers from a non English speaking background of their rights to be consulted.[81]

5.4.11   In relation to the occupational health and safety needs of **young workers**, the Committee received a video submission and took evidence (in camera) from the Labour Council's YouthSafe Committee. Some of the issues highlighted in the video submission include: the lack of OHS training in schools, TAFE or university prior to young people starting work or work experience; a lack of supervision in dangerous industries, such as construction; young workers being required to provide their own personal protective equipment; the increasing employment of young people in "call centres" where unrealistic targets are imposed; and a culture of bravado amongst young workers in dangerous industries.[82]

5.5   The Committee's *Interim Report*

5.5.1   As outlined in Chapter One, in 1996 the NSW Government announced the establishment of two inquiries: the review of the *Occupational Health and Safety Act 1983* conducted by the McCallum panel of review[83]; and the inquiry conducted by this Committee. The Committee's *Interim Report* of December 1997 includes a discussion of the interrelationship of the two inquiries. The Committee's Interim Report was primarily concerned with the Committee's response to the *McCallum Report*. The Committee's *Interim Report* included 32 recommendations, each of which had the bipartisan support of all Committee members. These recommendations were aimed at amending the *Occupational Health and Safety Act* and the way in which it is implemented.   The Committee's approach in the *Interim Report* was summarised by the Chairman:

> When the Occupational Health and Safety Act was enacted in 1983, NSW was clearly at the forefront of the regulation of workplace safety within Australia. Over the years, however, the Act has become somewhat outdated and other States have adopted a number of useful initiatives that have yet to be implemented in NSW. This report of the Standing Committee on Law and Justice seeks to rectify that situation.   The Committee draws attention to some of the strong features of the legislative regimes and related programs which operate in other States, and recommends that they be adopted in NSW.

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81   Ibid, pp 57, 61.

82   *In Camera Evidence*, 24/8/98, B Parker, M Thistlewaite, P Sekhon, N Mirabello & L Bennett.

83   *Review of the Occupational Health and Safety Act 1983: Final Report of the Panel of Review*, February 1997 (*McCallum Report*).

> At the same time, the Committee recognises the strengths of the NSW Act and affirms that these strengths must be retained. [84]

5.5.2　　The *Interim Report* included a comprehensive set of recommendations which sought to provide for a major overhaul of the *Occupational Health and Safety Act*. Some of the most important recommendations made by the Committee in relation to the development of the current legislative framework include the following.

Recommendations for legislative reform contained in the Committee's *Interim Report*, December 1997

- That the current objects of the *Occupational Health and Safety Act* be reviewed to ensure that they reflect adequately the principles of prevention, equity, participation and acceptance of responsibility provided that, in any review, reference to the psychological needs of workers is retained (*Interim Report* - Recommendation 1).

- That the substance or meaning of the current duty of care and defence provisions contained in sections 15 - 19, 50 and 53 of the *Occupational Health and Safety Act* be retained unchanged (*Interim Report* - Recommendation 3).

- That a range of non-monetary penalties be developed for offences under the *Occupational Health and Safety Act* including:

  - the posting of bonds;

  - community service orders;

  - publicity orders; and

  - the disqualification of corporate offenders from government contracts (*Interim Report* - Recommendation 14).

- That section 47A of the *Occupational Health and Safety Act* be amended to enable a court to order an occupational health and safety audit of a corporation (*Interim Report* - Recommendation 15).

- That the differentiation between corporate and non-corporate offenders be removed from the Occupational Health and Safety Act, and the development of a system of graduated penalties (*Interim Report* - Recommendation 16).

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[84]　　SCLJ, *Interim Report*, Chairman's Foreword.

- That a broad duty to consult be included in the *Occupational Health and Safety Act* (*Interim Report* - Recommendation 21).

- That the *Occupational Health and Safety Act* be amended to provide for the establishment of an occupational health and safety committees in any workplace, regardless of size (at the request of the majority of employees) (*Interim Report* - Recommendation 22).

- That the *Occupational Health and Safety Act* be amended to require the establishment of a position of health and safety representative in any workplace, regardless of size, at the request of the majority of employees. Such health and safety representative would be elected by employees and should have the following powers:

  - help resolve health and safety issues and report to management on workplace hazards;

  - request an inspection by a WorkCover inspector;

  - accompany a WorkCover inspector on a workplace inspection;

  - be present at accident investigations;

  - issue Provisional Improvement Notices (to which an employer may object, pending an inspection by a WorkCover inspector); and

  - stop work where there is an imminent danger, after consultation with the employer and pending an inspection by a WorkCover inspector.

These powers must be subject to appropriate checks and balances, such as those provided for in the Victorian *Occupational Health and Safety Act 1985*, so as to ensure that they are exercised responsibly and sparingly (*Interim Report* - Recommendation 23).

  - That the *Occupational Health and Safety Act* be amended to require the establishment of a position of health and safety officer in any workplace, regardless of size, at the request of the employer. Such health and safety officer would be nominated by the employer and should have the following powers:

  - help resolve health and safety issues and report to management on workplace hazards;

  - liaise with employees about health and safety matters;

  - request an inspection by a WorkCover inspector;

- accompany a WorkCover inspector on a workplace inspection; and

- be present at accident investigations (*Interim Report - Recommendation 24*).

- That the *Occupational Health and Safety Act* be redrafted in a plain English style and reorganised in a more coherent manner to facilitate comprehension and access (*Interim Report - Recommendation 28*).

- That the *Occupational Health and Safety Act* be amended to provide that the making of Codes of Practice be subject to the same requirements for consultation, the preparation of Regulatory Impact Statements and parliamentary scrutiny as the making of regulations under the provisions of the *Subordinate Legislation Act* (*Interim Report* - Recommendation 29).

- That the *Occupational Health and Safety Act* be amended to provide for the establishment of a Joint Parliamentary Committee on Workplace Safety, to be known as the WorkSafe Committee (*Interim Report* - Recommendation 32).

5.5.3   It is understood that the Government has had the recommendations contained in the Committee's *Interim Report* under active consideration during 1998. The Occupational Health Safety and Rehabilitation Council was asked to consider certain recommendations. When the General Manager of WorkCover NSW, Mr John Grayson, gave evidence before the Committee in August 1998 he indicated that draft legislation is in progress to implement the majority of the Committee's recommendations and that, where possible, administrative action had been taken to implement others.[85]

5.5.4   When representatives of the Labour Council of NSW appeared before the Committee in August 1998 they tabled a document which set out the Labour Council's response to each of the recommendations contained in the Committee's *Interim Report*. Whilst the Labour Council expressed support for most of the recommendations there were a small number with which they disagreed or expressed reservations. In relation to the Committee's recommendations concerning consultation, the Labour Council supported Recommendations 21 & 22 but expressed reservations about

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[85]   *Evidence*, 26/8/98, Mr J Grayson, p 25.

Recommendation 23, and opposed Recommendation 24. In relation to Recommendation 23, the response stated that:

A view was expressed that health and safety representatives should not be able to issue Provisional Improvement Notices. It was felt that having this power would deter employees in industries where employees are more vulnerable from being safety representatives because of their employer's reactions to these powers. This view saw the power to issue PIN's as being more appropriate to authorised officers. A contrary view saw the power for authorised officers to issue PIN's as not being valuable and was adamant that workplace safety representatives should have this power.[86]

In relation to Recommendation 24, the response stated that:

The view was that this conflicts with the appointment of OHS representatives elected by the employees (recommendation 23). This is for an OHS officer appointed by the employer (at the employer's request) with the same responsibilities as the OHS representative. Employers can currently appoint OHS officers. There is no need to amend the OHS Act to require the establishment of OHS Officer positions at the request of the employer. The question was raised as to whether amending the OHS Act in this way would water down the employer's absolute duty and devolve it further down the line. It was felt that it could end up with a situation where the OHS representative (elected by the employees) and the OHS Officer (appointed by the employer) would be left to fight out OHS issues.[87]

5.5.5   When the Committee asked the representatives of the Labour Council to elaborate on their concerns about Recommendations 23 & 24 it became evident that there were some conflicting views on these issues:

COMMITTEE: ...The response of the Labour Council of New South Wales in the document entitled "Response to the Interim Report on Workplace Safety" dated August 1998. The document states... [views about recommendation 23]... In view of our discussions, would you clarify that?...

Ms YAAGER: The unions were split...

Ms BUTREJ: The concern of many unions was that employees, because they have to rely on employers for their salaries, may feel intimidated, whether the employer was overtly intimidating or whether they were nervous about issuing improvement notices on their employers. Union officers are independent of the workplace. They have no direct employer-employee relationship and, therefore, could issue improvement notices as necessary. Representatives may feel intimidated and, therefore, not issue notices when they need to be issued. Although it is reasonable for representatives to have that power, many of them might not issue notices when they should be issued...

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[86]   *Exhibit WS 98/11*, tabled by Ms M Yaager 24/8/98, Labour Council of NSW, "Response to the Interim Report on Workplace Safety", August 1998.

[87]   Ibid.

Mr GAVIN: I represent people in a high risk industry, where serious accidents occur because of a lack of ability for people to have input into making things safe. We often rely on the powers of delegates to act in this capacity. They go to a site and stop a job because they regard it as unsafe. We believe a better approach in our industry would be to give people formal powers so that they are answerable for their actions. They would have to write out a formal notice and support it by evidence or whatever means was considered necessary.

COMMITTEE: They would have to have their backs covered?

Mr GAVIN: Yes, that is right. To make an impression on what is happening instantly, rather than having WorkCover continually going out to a site that has serious risks. In industries such as ours, where a lot of training is or would be provided, people would comfortably adopt positions as workplace representatives. It would become less an industrial relations battle and more a case of people acting in the capacity of de facto workplace inspectors.[88]

5.5.6   When Professor Ron McCallum appeared before the Committee he was asked for his comments upon the views expressed by the Labour Council about Recommendation 23. Professor McCallum unequivocally reiterated his view that health and safety representatives were necessary.

COMMITTEE: During the Committee's hearings earlier this week representatives of the Labour Council expressed reservations about the Committee's recommendations—which I think you have supported—for the establishment of positions of health and safety representatives, with powers to issue provisional improvement notices. However, they have submitted in other places that this power should rest with authorised officers of trade unions. Are you prepared to reiterate the reasons why you thought health and safety representatives were necessary, particularly in workplaces or industries that have a fairly low rate of trade union membership?

Professor McCALLUM: May I say that these arguments put by the Labour Council were put in chapter 6 of the 1995 Industry Commission report, they were put in my panel of review, and I am not surprised that they are put to you. It is really saying that it is the trade union officials who know best; they are the ones who should be given powers to issue provisional improvement notices. As I said on more than one occasion in my panel of review deliberations, the plain truth is that 75 per cent of workers in the private sector are not members of trade unions. In unionised workplaces, it is most likely that if a trade union shop steward is well regarded, he or she will be elected.

I am a great believer in the ballot box and the jury. I think that workers have a democratic right to elect from amongst their own number a safety and health representative. To limit it to simply union officials, which would only be in unionised work forces, is really saying, hang the rest. I do not want to become testy, but I have heard this argument from the Labour Council reiterated over and again. It smacks of self-interest. I am not concerned about self-interest.

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[88]   *Evidence*, 24/8/98, Ms M Yaager, Mr I Gavin, Ms T Butrej, pp 46-47.

> I am concerned with the welfare of all the workforce, and that is why I reiterate that we should be looking at the Victorian situation. When the Kennett Government came in, it did not tear down the existing safety framework; in fact, it added to it by its work on the Victorian equivalent of WorkCover. The system of safety and health representatives has worked well. Let us leave it to be democratically decided by the workers, and not by trade unions, labour councils or employers.[89]

5.5.7   *The Committee reiterates the recommendations contained in the Interim Report and urges their speedy implementation. The Committee believes that those 32 recommendations provide the framework for NSW to return to the forefront of OHS regulation in Australia. Various recommendations have been further developed and will be specifically referred to throughout this report.*

5.6   Recommendations

Recommendation 1:

The Committee recommends that the NSW Government fully implement the recommendations contained in the Committee's *Interim Report* of December 1997 for the comprehensive overhaul of the *Occupational Health and Safety Act*, so as to return NSW to the forefront of occupational health and safety regulation in Australia and ensure that the legislative framework is able to meet the challenges posed by the changes in the workplace over the last twenty years.

Recommendation 2:

The Committee recommends that the objects of the *Occupational Health and Safety Act* be amended to ensure that particular attention is given to the occupational health and safety needs of vulnerable workers. [Refer to *Interim Report* - Recommendation 1.]

Recommendation 3:

The Committee recommends that the *Occupational Health and Safety Act* be amended to enhance and develop mechanisms for consultation in the workplace, including the establishment of positions of health and safety representative (elected by employees) and health and safety officer (appointed by the employer). [Refer to *Interim Report* - Recommendations 21, 22, 23 & 24.]

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[89]   *Evidence*, 26/8/98, Professor R McCallum, p 22.

Recommendation 4:

The Committee recommends that the *Occupational Health and Safety Act* be amended to enhance the status of Codes of Practice. [Refer to *Interim Report* - Recommendation 29.]

Recommendation 5:

The Committee recommends that the *Occupational Health and Safety Act* be amended to provide that an employer who complies with a Code of Practice is deemed to comply with the relevant law covered by the Code of Practice.

Chapter Six
OHS management systems, risk management and small business

6.1   Questions posed in the Committee's *Issues Paper*

6.1.1   Paragraph A of the Committee's terms of reference required that the Committee inquire into and report upon "integrating management systems and risk management approaches aimed at reducing death and injury in the workplace". The Committee's February 1998 *Issues Paper* included a discussion of risk management and the integration of risk management into management systems generally. The *Issues Paper* also provided a number of examples of corporate safety management systems. There was also a brief discussion of some of the issues involved in the application of risk management and safety management systems to small and medium sized enterprises (SMEs) and the role of Government in relation to the promotion of the use of risk management and safety management systems. The *Issues Paper* posed three specific questions upon which submissions were invited:

1. How can risk management approaches to workplace safety best be integrated into management systems?

2. To what extent should small business be expected to adopt a risk management approach to workplace safety?

3. What role should Government play in encouraging the use of risk management systems, particularly in relation to small business?

6.2   Industry Commission recommendations

6.2.1   As mentioned in the Committee's *Issues Paper,* the Industry Commission reviewed the use of risk management principles and safety management systems throughout Australia in its 1995 report on *Work, Health and Safety*. In relation to risk management, the Industry Commission recommended that the principal OHS legislation in each jurisdiction should be amended to explicitly require employers to undertake a process of risk assessment.[90]

6.2.2   In relation to safety management systems, the Industry Commission noted the successful adoption of "enterprise safety management systems" by best practice enterprises. The Commission noted that such systems were used

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[90]   Industry Commission, *Work, Health and Safety: Inquiry into Occupational Health and Safety*, Volume one, September 1995, p 60.

as part of a systematic approach to management, in line with principles of total quality management, and also mentioned that some enterprises had successfully integrated not only OHS but also environmental policies into their management systems.[91] The Industry Commission advocated that the sponsors of safety management systems should be able to have the option of substituting particular OHS regulatory requirements with management systems which provide equivalent or better protection to those prescribed in regulations. The Commission recommended that:

> the principal OHS legislation in each jurisdiction explicitly recognise the use of safety management systems by individual enterprises to identify, assess and manage the risks to health and safety associated with the enterprise. The legislation should provide for the adoption of such systems to be granted prima facie evidence that care has been exercised. The criteria for enterprise safety systems to be granted evidentiary status should include that:
> * there is adequate ongoing consultation between the employer and their employees and, as appropriate, their trade union representatives;
> * all the risks to health and safety at the workplace in question are being adequately addressed; and
> * relevant mandated requirements are being met or an equivalent level of protection to health and safety is achieved.[92]

6.2.3   It should also be noted that the Industry Commission recognised that safety management systems were more likely to appeal to larger enterprises, and that SMEs "may be better served by other approaches such as codes of practice". Furthermore, the Commission discussed a number of possible incentives that could be used by Governments to encourage the adoption of safety management systems.[93]

6.3   Development of AS/NZS 4801

6.3.1   Since the publication of the Industry Commission Report in 1995 there have been a number of important developments in relation to safety management systems.   For example, the Committee received evidence from representatives of Standards Australia, concerning the development and application of Australian and New Zealand Standards on Risk Management and OHS Management Systems. The representatives of Standards Australia pointed out that, in September 1996, a workshop organised by the International Standards Organisation (ISO) decided against the development

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[91]   Ibid, pp 83-84.

[92]   Ibid, p 89.

[93]   Ibid, pp 88-89.

of an international standard on OHS management systems.[94] As a result of that decision there are now eight separate national standards being developed on OHS management systems, in Australia, six European countries and Japan.

6.3.2   The representatives of Standards Australia provided the Committee with a briefing on the development and content of two Australian and New Zealand Standards: AS/NZS 4804 and proposed AS/NZS 4801. These standards had been developed by a committee with broad representation, including:

- Professor Dennis Else (Chairman of the National Occupational Health and Safety Commission) as Chair;
- representatives of the Australian Council of Trade Unions and the Australian Chamber of Commerce and Industry;
- four state OHS regulators, including WorkCover NSW; and
- the National Safety Council and Safety Institute of Australia.

6.3.3   The roles of the two standards were explained. AS/NZS 4804:1997[95] was designed to provide general guidelines on establishing an OHS management system. Proposed standard AS/NZS 4801[96], on the hand, would be a specification standard, against which an organisation's OHS management system could be assessed.

> Why do we have two management systems standards? The 4804 that I mentioned gives a guidance on establishing an occupational health and safety management system. The other system under development, which is currently at the draft-for-comment stage—a copy of which is in the Committee's papers—is to be AS/NZS 4801. That will be a specification—a specification being something against which a company's performance can be assessed. It provides the opportunity for specification. That standard is under development and we hope to have that development completed by the end of the year.
>
> How does it all fit together? There is a body called the Joint Accreditation Scheme for Australia and New Zealand—JAS-ANZ—which currently accredits bodies with certified quality management and environmental management systems. It will also accredit bodies that certify occupational health and safety management systems. Certification will be undertaken by the existing certifying bodies, such as the National Safety Council, which is already

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[94]   See the discussion on this workshop in the *Report on European Study Tour: July 1998*, reproduced as Appendix One, pp 43-45.

[95]   *Australian/New Zealand Standard AS/NZS 4804:1997 Occupational health and safety management systems - general guidelines on principles, systems and supporting techniques*, Standards Australia, published 5/12/97.

[96]   *Draft Australian/New Zealand Standard for Comment DR 98326: Occupational health and safety management systems - specification with guidance for use*, Standards Australia, issued 1/7/98.

> involved, NATA and QAS, which are also involved in these other types of certification. Many companies will also self-certify. They will feel that they have the need for an external certification body. If they are a large and reputable company they may be able to self-certify.[97]

6.3.4   In terms of the integration of risk management approaches into management systems, it was pointed out that AS/NZS 4804 discusses the steps involved in risk assessment and risk management. The development and content of two Australian/New Zealand standards on Risk Management (AS/NZS 4360 and AS/NZS 3931:1998) were also explained, and it was noted that Standards Australia is currently developing a handbook "that makes the connection between management systems and risk management even clearer, particularly for the benefit of small business".[98]

6.3.5   There was considerable discussion about the possible application of proposed standard AS/NZS by Government, and the current application of safety management systems in Victoria through the SafetyMAP (Management Audit Programme) system.

> I note that one of the key question is where does the Government's role fit into this? We have been studying the Victorian Government's approach to risk management. Within Victoria they have gone to a system whereby they grade organisations according to their occupational health and safety performance and whether they have a management system in place. It is very important to look at the two elements. One of the systems I spoke about a little earlier was the SafetyMAP system developed by the Victorian Government. It is one of many occupational health and safety systems against which companies can be certified. At the moment 87 companies have SafetyMAP certification, mostly in Victoria but some outside the State. When companies meet all the objectives, they have a good record, based on no prosecutions and they also have a management system in place, they are elevated to the top level which, in turn, allows them to have reduced premiums on workers compensation and fewer inspections. This is a strategy that the Victorian Government has used. It is certainly one that is worthy of consideration. Obviously it will be up to the New South Wales Government which approach it wants to take...

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[97]   *Evidence*, 18/8/98, Mr J Henry, pp 4-5.

[98]   Ibid, p 5.

COMMITTEE: In the areas of standards, specifications and management systems, are you in competition with the National Safety Council, because it has a five-star accreditation, and WorkCover Victoria, which has the SafetyMAP system?

Mr HENRY: No, we are not in competition. All of those bodies sit on the committee that is developing the standards AS 4804 and AS 4801. They all recognise the fact that at the moment all these systems are out there. One of the strongest supporters, in fact the organisation that proposed the development of the specification document, was the National Safety Council. All of these bodies work on this standard. As far as I know, the Victorians have said privately that they will go over from SafetyMAP to AS 4801, but they have not made a public, political statement on that. My belief is there will be a gradual transition. I think they all recognise that it is inefficient for all these companies to be offering different certification systems, and it is confusing in the market place.[99]

6.4 WorkCover NSW's position

6.4.1 As outlined in Chapter Four, in NSW the *Occupational Health and Safety Act* has recently been amended to provide for the making of regulations concerning risk assessment, however, there is no general requirement in the Act for risk assessment to be conducted by employers. It is envisaged that the proposed consolidated OHS regulation will mandate a risk assessment process.

6.4.2 The Committee's *Interim Report* included a brief discussion of the Victorian SafetyMAP programme and the consideration being given to the adoption of SafetyMAP by WorkCover NSW. The report quoted evidence from a senior officer of WorkCover NSW, to the effect that the emphasis of WorkCover NSW to date, in relation to safety management systems, had been to use the self insurer licensing system to get large companies to adopt a safety management systems approach.[100]

6.4.3 The Committee received evidence concerning WorkCover NSW's approach to OHS management systems at the Committee's hearings in August 1998. The Committee was told that, whilst considerable effort was being devoted to the development of a formal approach, it would probably be about six months before WorkCover finished this work. The emphasis would be on providing guidance to business rather than the development of a specific system.

Mr RUSSELL: ...It is no surprise to this Committee that a great number of people are grappling with the issue of what is an OHS management system

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[99]   Ibid, pp 7, 15.

[100]   SCLJ, *Interim Report*, p 44.

and how does one apply an OHS management system in an effective way. That is something WorkCover is trying to come to terms with. We talk a great deal with people in the industry and they are saying to us there is a lot of information at the present time about occupational health and safety management systems, but what is it and when do they need to apply it. They are asking whether they need to apply AS4801, which is a draft Australian standard of management systems, or do they apply AS4804, or do they need to go to the National Safety Council OHS management systems. Do they have to have their safety management systems audited and does the auditor have to be accredited? There is considerable confusion, not the least of which is amongst the key players in the game. WorkCover recognises there is a fundamental need to bring some simplicity into it, to be able to articulate clearly to people what that means...

COMMITTEE: Each step?

Mr RUSSELL: That is exactly right, and to do it in a way where people are better positioned to be able to decide what sort of system they need and how they apply it in a way that will not send them out the back door, a way that is cost-effective and easy. If they do need to go to a higher level system, such as 4801, or they do need to have it audited, they need to know when to take those steps. The internal levers are still happening. We are not there yet and a great deal of work needs to be done. In response to that, WorkCover has established a working party, which will be a focus group of people from within the organisation and which will include people from outside the organisation who will have an opportunity to tap into the expertise that Mr McDonald talked about in the Year 2000 Best Practice Project, with a view to developing guidance material which will provide some clarity on the issue of OHS management systems. My best guess on that is that we are about six months away from having a product developed. We are working on that as quickly as we can with limited resources and obviously a limited time frame. But the idea is we are endeavouring to simplify a complex issue as best we can.

... The challenge is, as far as I am concerned, to make it as simple as possible. The last thing in the world we want to do is to complicate the issue further. We are not in the market to put another OHS management system forward; we are in the market to try to explain to people just what it means and when they should apply it. It should be user friendly to the point where it is as accessible and usable to an organisation of five people as it is to an organisation of 500...

COMMITTEE: Has the committee determined, at the end of this process, whose responsibility it will be or who is going to take carriage of what you are trying to do? Is that clear?

Mr RUSSELL: I think there are a couple of issues there with respect to responsibility. If we are talking about responsibility for actually promoting the system or the information product that we develop, WorkCover will have responsibility for that. If you are talking about responsibility for OHS management systems as they apply in workplaces, quite clearly a legislative responsibility is outlined for that. The previous one, WorkCover will, as part of the process, develop the implementation plan but we are fairly raw on that at this point in time. It is early stages, as it is with some of the commercial products. As I indicated, AS4804 is in draft form at the present time. I believe the Committee had people from Standards Australia here today to tell it about that system. There is a range of commercial products on the market and we see there is a need and the people we speak to indicate there is a need to explain when and how they need to use those systems.[101]

6.4.4   In answer to questions from the Committee about the possible application of SafetyMAP, representatives of WorkCover NSW spoke about a pilot project that is being conducted with ten councils. However, it was made clear to the Committee that WorkCover was opposed to the mandating of a specific OHS management system, including SafetyMAP.

Ms PATTERSON: The discussion of safety management systems and the approach that WorkCover New South Wales should take to encourage people to implement these systems has been a subject of great debate over the course of this year. The precise nature of the recommendation of the Occupational Health and Safety and Rehabilitation Council was that we should not be in the business of adopting one model or, in this case, audit tool, such as SafetyMAP, but should in fact be encouraging people to implement systems of their choice which suit their own organisation most specifically, and that we should not be in the business of limiting what model or tool they choose to implement. It was also recommended, however, that SafetyMAP, as an available tool, which at that stage in March WorkCover was in the process of testing, should be encouraged as an option that people could pick up.

WorkCover's view at this stage in developing our policy in this area is that we would very much oppose the idea of restricting businesses to implementing only one type of tool or model, for several reasons. Most importantly, the process of developing management systems improves every day; there are new developments that are continually improving and becoming more sophisticated. Secondly, we would argue strongly that the nature of the duty of care under the Act means that, effectively, one must design one's system to meet one's own needs. Something off the shelf may well not do that, and in fact could have the effect of leading one up the garden path if it is totally inappropriate for one's particular organisation.

Therefore, while we actively promote systems such as SafetyMAP, and we make them available in our bookshop and our field staff go around and promote them, we make it absolutely clear to people that if they would rather use another system that is available or develop one for themselves, that is

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101   *Evidence*, 18/8/98, Mr B Russell, pp 33-35.

equally acceptable. What we try to do is to develop, from the mores of information presently available, some really clear and very simple guidelines specifically aimed at assisting people to choose between what is of value and what is not.

We are heading down the path of trying to simplify the whole process of implementing management systems and giving people advice about what that involves. We do, however, have a specific project in this State which involves SafetyMAP specifically. We are trialing the implementation of SafetyMAP in 10 councils. These councils have reached agreement with WorkCover and made a public announcement that they would implement a safety system in conjunction with WorkCover, providing assistance and information to it over the course of 18 months. WorkCover will audit the 10 organisations over that period and examine the success of the implementation of that type of system—in other words, whether they are making any changes to their bottom line, both financially and in terms of numbers of injuries and incidents. Secondly, we are measuring the value of WorkCover providing services in this area, actually assisting people to implement systems.[102]

6.4.5   As mentioned in the above quotation, the issue of OHS management systems has been considered by the Occupational Health Safety and Rehabilitation Council during 1998.   The submission received from the Council expressed concern about the expanding number and complexity of OHS management system standards and the confusion which this causes for industry.

Council is concerned by the expanding number and range of auditing standards, guidance material and protocols currently being developed in various forums, for example via JAS-ANZ, Standards Australia and the Quality Society of Australia. Council acknowledges the ability of any organisation to develop and distribute such documents to support implementation of risk management in workplaces. It is of particular concern to Council, however, that the range of standards and approaches to accreditation being developed is causing confusion among the industry partners, and unnecessary complexity.[103]

When the Committee received evidence from members of the OHS&R Council, some members of the Council expressed strong support for WorkCover NSW adopting SafetyMAP.   However, other members of the Council emphasised that the Council's view was that there must be flexibility and a range of systems available.[104]

6.4.6   The submission received from the Labour Council of NSW expressed concern about the fact that WorkCover NSW had not yet decided to adopt

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[102]   *Evidence*, 26/8/98, Ms M Patterson, p 43.

[103]   *Submission*, 28/7/98, OHS&R Council, p 1.

[104]   *Evidence*, 25/8/98, Mr I Gavin, Ms A Taylor, pp 32-34.

SafetyMAP.   The Labour Council submitted that SafetyMAP was an appropriate model which could be readily adopted in NSW. The Labour Council said that SafetyMAP was "inexpensive, readily available, includes a wide range of support documentation, software and videos and provides consistency across the States in all types of industries".[105]

6.5   OHS management systems, risk management and small business - lessons from Europe

6.5.1   As set out in Chapter Three the growth of employment in small business has brought with it a range of OHS implications. The recommendations in Chapter Five, concerning consultation and an enhanced role for Codes of Practice will, in the Committee's view, make the necessary legislative changes to enable these needs to be addressed. However, merely changing the *Occupational Health and Safety Act* will not be enough. The question of how far Government should go in mandating the use of OHS management systems and risk management, and the application of such concepts to SMEs, was a major focus of the European study tour undertaken by the delegation in July 1998. The report on the study tour, which is reproduced as Appendix One, contains a wealth of information on these issues. There is no point in extracting large amounts of that information here. However, there are a number of key lessons arising from the European experience with these matters. These lessons are summarised below.

6.5.2   The most highly developed example of attempts by Governments to regulate OHS through management systems, including in relation to SMEs is the "internal control" approach adopted in Norway and Sweden. The "internal control" approach was first developed in the Norwegian offshore oil industry in the late 1970's as a way of forcing operating companies to take greater responsibility for the management of the occupational health and safety of their workers.[106] The following definition of "internal control" was provided:

> Dr Lindoe defined the "internal control" approach as one which concentrates upon the requirement for organisations to have an internal management system to systematically ensure the health and safety of employees. The role of the relevant supervisory authority then becomes one of ensuring that the required internal control system is adequate and appropriate, rather than supervising compliance with detailed prescriptive requirements for particular work processes and equipment.[107]

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[105]   *Submission*, 24/8/98, Labour Council of NSW, p 7.

[106]   *Report on European Study Tour, July 1998*, reproduced in Appendix One, p 10.

[107]   Ibid, p 7.

It was emphasised to the delegation that there were principles underlying the "internal control" approach. Firstly, employers themselves must take responsibility for the development of a systematic approach to OHS. Secondly, employers must document the measures taken in this systematic approach.[108] It was also emphasised on a number of occasions that, for "internal control" to work there must be a genuine democratic dialogue within organisations.[109]

6.5.3   The key lessons which the delegation was able to glean from the briefings and documentation received in relation to the application of the "internal control" approach are summarised below:

I   OHS management systems do work for large firms which have the right "safety culture" - they can lead to real improvements in OHS performance and to significant cost savings.[110]

II   OHS management systems only work where there is genuine and meaningful participation by employees and where employees have a real opportunity to contribute to decisions about the organisation of work, purchase of plant etc.[111]

III   There is a significant distinction between corporate OHS management systems which focus on worker behaviour and become a disciplinary tool, and the Scandinavian approach to "internal control" which emphasises meaningful worker participation in decision making.[112]

IV   The promotion of OHS management systems can play a role in wider initiatives to improve the professionalism of business, particularly SMEs.[113]

V   Any legislative requirement for the use of OHS management systems will necessitate new strategies for providing advice to business, particular SMEs , and new enforcement strategies by the Inspectorate.[114]

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[108]   Ibid, p 16. It should be noted that the documentary requirements are different in Norway and Sweden, with less emphasis on documentation in the Swedish approach - see p 20.

[109]   Ibid, pp 9, 12, 16, 20.

[110]   Ibid, pp 8, 35, 37.

[111]   Ibid, pp 9, 16, 20.

[112]   Ibid, pp 21-22.

[113]   Ibid, pp 9, 14-15

[114]   Ibid, pp 9, 17.

6.5.4   There were a number of questions upon which the delegation received conflicting messages from the experts with whom they met. These questions include:

I   The extent to which OHS management systems are useful/applicable to SMEs.[115]

II   The extent to which it is appropriate to place responsibility in the hands of management for the development of OHS strategies, in contrast to prescription through legislation or Codes of Practice.[116]

III The value and role of international (or even national) standards for OHS management systems.[117]

IV   The extent to which Governments should prescribe a particular OHS management system or the broad contents of an OHS management system.[118]

6.5.5   Perhaps the most useful information or views which the delegation obtained on these issues, came from Dr Kaj Frick, of the National Institute for Working Life in Sweden. Dr Frick has previously taught in Sydney and has a good understanding of the regulatory system and OHS culture in Australia. Dr Frick was therefore able to provide the delegation with some particularly valuable comments in relation to the possible application of the "internal control" approach in Australia. For example, Dr Frick was aware of the growing utilisation of corporate safety management systems in Australia. Dr Frick's comparison of the Scandinavian "internal control" approach with corporate safety management systems was therefore particularly important.

In response to a number of questions from the delegation, the discussion turned to the comparison between the Scandinavian "internal control" approach and corporate safety management systems. Taking the Du Pont safety management system as an example, Dr Frick pointed out a number of similarities with "internal control". These similarities and positive features include:

• the emphasis upon commitment by senior management to improved OHS performance, including in some cases the commitment to "no injuries or occupational disease";

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[115]   Ibid, pp 16, 21, 50.

[116]   Ibid, pp 25, 31, 56.

[117]   Ibid, pp 43-45.

[118]   Ibid, p 60.

- the requirement for line management responsibility; and

- the development of specific tasks, plans and strategies.

On the other hand, Dr Frick pointed out a number of significant differences between "internal control" and corporate safety management systems. Some of the problems he identified with corporate safety management systems include:

- an authoritarian rather than participative approach, in which workers are instructed how to act rather than consulted in a meaningful way;

- an emphasis upon worker behaviour and a lack of attention to the way in which work is organised as a source of safety problems;

- their use in some cases as a way of keeping unions out of safety issues, or out of an enterprise generally;

- a focus upon injuries only, rather than occupational disease; and

- the potential to lead to under-reporting of injuries (and disease) to ensure that particular targets are met.

Dr Frick cautioned that, if we were to go down the path of encouraging or requiring the implementation of a systematic approach to OHS within enterprises, we should be cautious about promoting corporate safety management systems. Rather, we should be encouraging or requiring the adoption a systematic approach which gave the highest priority to genuine democratic dialogue in which employees had an opportunity to help design the way in which work is organised.[119]

6.5.6   The delegation was also cautioned about the use of corporate safety management systems by consultants to the Institute of Employment Rights in London. Professor Theo Nichols, of Bristol University, warned of the dangers of corporate safety management systems being used to de-unionise a workforce, or at least exclude unions from playing a role in OHS. He was particularly sceptical of safety management systems which relied upon the creation of a "safety culture", as this culture could then be used to exclude dissidents who do not subscribe to the accepted view about how to improve OHS.[120] In a recent article Professor Nichols has referred to the "blips" in OHS performance that can occur even in "best practice" corporations using safety management systems, particularly during corporate restructuring and "downsizing". He has also referred to the incongruity between the corporate safety managment approach and the level of consultation with trade unions which occurs in European countries.

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[119]   Ibid, pp 21-22.

[120]   Ibid, pp 56-57.

[Reviewing W Mottel, J Long & D Morrison, *Industrial Safety is Good Business: the DuPont Story*, New York, Van Nostrand Reinhold, 1995] Wheras at one point they do acknowledge that DuPont went "wrong - very wrong", even here, with reference to a "blip" in the safety record in 1986 and 1987 when injuries increased, their criticism is soon followed by praise for the way the company proceeded to put matters to right. Readers might have gained more benefit has they been told more about what led to the blip in the first place. What we are told is instructive and familiar: that DuPont cut 40,000 employees; that some units lost as many as 25%; that with increasing emphasis on cost effectiveness some managers gave priority to uninterrupted production and began to take short-cuts. Injuries went up. Perhaps there is also something to be learnt from these authors' discussion of the so-called global safety challenge to US multinational corporations:

> US managers working abroad have difficulty in adjusting to the principle of codetermination as it operates in some European countries. Even firms that have had a fairly tranquil relationship with their wage roll people are nonplussed by the fact that union representatives sit at management's table when many economic and personnel decisions have to be made. These may include decisions on safety regulations.

Nonplussed that union representatives sit at management's table? You bet.[121]

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[121]   T Nichols, "Review Article: Health and Safety at Work", *Work, Employment & Society* 12(2), June 1998, pp 373-374.

6.5.6   Another constant theme of the briefings and documentation provided to the delegation was the need for more creative approaches to the provision of advice to SMEs. Time and again, the need for personal contact with SMEs was emphasised. Some of the strategies which the delegation was told about include the following:

- funding the appointment of OHS specialist advisors in employer associations;[122]
- working through networks to which SMEs belong including, in addition to employer associations, local Chambers of Commerce in OHS blackspot areas;[123]

- working through professional advisors with whom SMEs have contact such as accountants; and

- co-ordinating the provision of OHS advice with other Government agencies which provide advice to SMEs with a view to the establishment of "one stop shops" for advice and the promotion of OHS management systems as one part of a larger goal of assisting SMEs to achieve total quality management.[124]

6.5.7   The delegation was interested to see that structures such as the Industry Reference Groups provided for in the *Workplace Injury Management and Workers Compensation Act 1998*, and discussed in Chapter Four, have been in operation in some countries for some time. The delegation was impressed by the role of these bodies in developing industry specific guidance material, particularly aimed at SMEs. For example, the Sector Safety Councils which operate in Denmark have developed a set of booklets which identify the five most serious OHS hazards or issues in each of 48 separate industries. These booklets are provided to SMEs as guidance material, as well as being used by inspectors as an auditing tool or checklist.[125]

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[122]   Ibid, p 15.

[123]   Ibid, pp 42, 49.

[124]   Ibid, pp 9, 14.

[125]   Ibid, p 30.

6.6 OHS management systems, risk management and small business - ideas in submissions

6.6.1 A number of submissions received by the Committee included insightful comments and ideas about how small and medium sized enterprises (SMEs) can be assisted to implement risk management and integrate risk management into their existing operating systems.

6.6.2 The submission from the OHS&R Council recommended the adoption of a simple six-step approach to risk management, which has been developed by the National Occupational Health and Safety Commission (NOHSC) and promoted by WorkCover in the current community awareness campaign. The Council suggested that the six-step approach was one which was flexible enough to be incorporated into a detailed OHS management system by larger enterprises and yet provide a basic standard for SMEs.

> Essentially Council considers that a fundamental six step approach to risk management should form the basis of an effective occupational health and safety system. The six points are:
>
> 1. Develop an OHS policy and related programs.
> 2. Set up a consultation mechanism with employers.
> 3. Establish a training strategy.
> 4. Establish a hazard identification and workplace assessment process.
> 5. Develop and implement risk control.
> 6. Promote, maintain and improve these strategies.
>
> The fundamental six step approach allows the flexibility for businesses to develop a more comprehensive safety management system, or adopt an existing system, while maintaining a basic standard for smaller businesses. However, it needs to be kept in mind that for some smaller businesses six steps may be too complex.
>
> Generally, flexible or simple approaches that can be easily adopted by a variety of businesses are advocated by Council. How formal or informal the system is depends on the level of risk and the resources of the company. It is of prime importance that an objective measurable outcome is envisaged when a safety system is being established. Council believes that the emphasis needs to be on the outcomes rather than on a particular OHS system.
>
> Council considers that all businesses should adopt a risk management approach irrespective of size. The simple six step approach, mentioned above, could be used. However defining what constitutes small or large businesses is problematic. Council regards the real issue to be the hazardous nature of the business or risk in the industry rather than the size of the enterprise. The extent of the risk management approach should be linked to industry determined and agreed strategies.[126]

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[126] *Submission*, 31/7/98, OHS&R Council, pp 1-2.

6.6.3   The Council also recommended a number of means by which Government could promote the use of such an approach. These included: the provision of assistance to WorkCover by other agencies of Government which provide advice to SMEs; providing information through accountants; the provision of financial incentives to SMEs (such as funding of training for employees); and the development of industry specific guidelines.

> Council recommends that Government should be committing resources to a coordinated publicity campaign which utilises latest technology, to promote risk management to business and industry. Tripartite consultation is essential to this process.
>
> Small business would be more easily encouraged to adopt a risk management approach, if information was more readily accessible. For example Government agencies such as the Office of Small Business and Department of Fair Trading could assist WorkCover in promoting occupational health and safety and risk management by providing their clients with information packages. As small business managers tend to rely on their accountants for information WorkCover might target accountants with information kits. Also, material which has already been produced interstate could be made available to NSW business, eg the Queensland Risk Management WorkBook/Retail and Wholesale Trade Industry.
>
> Council also recommends that Government provide incentives for small employers to train a nominated responsible person in risk management. While this person may change employers, the skills learnt could be readily transported to the next workplace (often another small employer) and a safety culture could thus be encourage and developed in small business from the bottom up. Training assistance could be provided via a grant or payroll tax rebate.
>
> Government might also provide industry specific guidelines and examples on how to implement a risk management approach eg the Construction Policy Steering Committee Guidelines which provide criteria required when tendering for a government contract. These could be applied to other areas of OHS activity.[127]

6.6.4   The submission received from the NSW Labour Council called for the introduction of a legislative requirement for all employers, regardless of size, to adopt a systematic approach to the management of workplace risks, supported by industry codes of practice which would provide practical advice about how this could be achieved.[128]

6.6.5   In relation to SMEs specifically, the Labour Council argued that Government should encourage and facilitate the adoption of the six-step approach referred to above. The Labour Council then set out a range of innovative

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[127]   Ibid, pp 2-3.

[128]   *Submission*, 24/8/98, Labour Council, p 5.

means by which OHS guidance can be provided to SMEs. These include: the provision of information through Government agencies from the point of registration of an SME as a business; and the use of government contracts to drive SMEs to take OHS seriously. The Labour Council drew attention to a recent study of the most common points of contact by SMEs and the capacity for Government to target guidance to SMEs through these contact points. The Labour Council endorsed the four recommendations arising from the study:

1. Government accident investigators should routinely publicise the brand names of machinery or substances involved in accidents or incidents.

2. Accountants should verify that their small business clients have carried out rudimentary hazard identification and control procedures.

3. Small businesses should submit to their workers compensation insurer a declaration that they have carried out a basic hazard analysis and implemented relevant controls.

4. Banks should obtain from small businesses statements about how hazards are being controlled, as a condition of receiving a loan.[129]

6.6.6   The Committee received a number of submissions from employer associations, which highlighted the need for industry based guidance material to assist SMEs utilise a risk management approach. These submissions pointed out the valuable role that employer associations can play in educating SMEs.[130] The submission from the Hotel Motel & Accommodation Association for called for the provision of Government funding to assist employer associations to take on this role.

> As an employer association, we accept the responsibility of an education process which integrates workplace safety with their day to day management systems... An understanding of the workings of small business and operators in our industry and the tiers of the sectors within the industry joined with the culture and understanding of the background of the smaller operators is vital to any discussion on implementation and integration of systems and management. As an industry employer association, we would be able to perform research with positive outcomes if funded by the Government...
>
> The cost of education programmes in workplace safety have always fallen into the financial resources of an industry association, and if necessary they have to pass this cost on to their members. Again the member does not attend

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[129]   Ibid, pp 10-11, quoting from A Hopkins & L Hogan, "Influencing Business to Attend to Occupational Health and Safety", *Journal of Health and Safety Australia and New Zealand*, CCH.

[130]   *Submissions*, 6/8/98, Retail Traders Association of NSW, p 5; Timber Trade Industrial Association, p 3.

these workshops because of time restraints in operating their business and/or financial restraints. The Government should therefore assist the industry by removing the costs associated with understanding risk management systems by small business operators in our industry sector. Allowing the industry association to get the message to those who most need to understand. And most importantly fund the industry association to perform this task.[131]

6.6.7   Reference was made in paragraph 6.5.6 above to the potential for OHS regulators to work through a wide range of networks to which SMEs belong, including local chambers of commerce, particularly in OHS blackspot areas. This is an idea whose time appears to have come in NSW. Earlier this year, the Hon Jeff Shaw QC MLC, Attorney General and Minister for Industrial Relations, announced the state's 50 worst OHS blackspots by postcode, and said that WorkCover NSW would be targeting those areas through random inspections.[132] The Committee understands that in a number of the worst blackspots identified, such as Smithfield/Wetherill Park, Liverpool, Gosford and Lismore, there are particularly active chambers of commerce with a large membership of SMEs. Indeed, the chambers of commerce in each of these areas have been identified to the Committe as "best practice" chambers. There would appear to be real value in WorkCover NSW working together with those chambers, perhaps on a pilot project basis, in an effort to get appropriate guidance material out to SMEs in those blackspot areas.

6.6.8   The National Occupational Health and Safety Commission (NOHSC) has recently started a pilot project in conjunction with Rotary International and WorkCover Victoria to assess the extent to which existing business networks such as service clubs can be utilised to deliver OHS guidance information to SMEs.[133] Once again, this appears to be a worthwhile initiative, in line with the strategies highlighted abaove in paragraph 6.5.6.

6.7   Enforcement implications

6.7.1   As noted above, one of the lessons from the European study tour in July 1998 was the fact that the growing use of OHS management systems requires the development of new enforcement strategies by the Government inspectorate. The delegation received detailed briefings on the new approaches to enforcement which are being implemented in Norway and

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[131]   *Submission*, 29/4/98, Hotel Motel & Accommodation Association of NSW, pp 4,6.

[132]   *Shaw Announces WorkCover Blitz on State's Black Spots*, Media Release, 18/5/98.

[133]   *WorkSafe News*, October 1998, p 4.

Denmark.[134] It appears that much can be learnt from the experience of these and other European countries.

6.7.2   In October 1997 the Committee received a briefing from Professor Neil Gunningham, of the Australian Centre for Environmental Law at the Australian National University, in relation to a consultancy project that he had completed for WorkCover NSW.[135]   This consultancy reviewed WorkCover's enforcement strategies and made recommendations for the development of a two track enforcement model. Under this model, large companies would be encouraged to adopt OHS management systems, while SMEs would be the subject of a higher level of prescription through Codes of Practice or Regulations, and inspectoral activity. Professor Gunningham suggested that one benefit of the increasing use of OHS management systems (which included strict requirements in relation to subcontractors) was that large companies effectively took on a de facto educative and compliance role in relation to their contractors. Professor Gunningham outlined his model:

> Professor GUNNINGHAM: I am interested in how to redesign regulation. The two main areas in which I have worked are environmental regulation and occupational health and safety, and they overlap to a significant extent. I am interested in the extent to which one can use a broader range of regulatory mechanisms to achieve efficient and effective regulation in those areas. I think that broader range of mechanisms should include things like self-regulation - although I do not believe it can be used by itself, so it is probably more sensible to refer to it as co-regulation - information-based strategies, and much more flexible enforcement strategies, as well as conventional command and control.
>
> I suppose my overall position is to use a big stick only when it has to be used, because otherwise it tends to be counter-productive. To put it very crudely, we have good guys and bad guys out there. Often, it is hard for regulators to know who is who in advance, and it is probably sensible to start off assuming they are good guys and finding strategies to encourage, facilitate and reward better occupational health and safety performance. But you must bear in mind that some of them will turn out not to be doing so well, so you also have some sticks in your armoury to deal with those people.
>
> I argue that we need a much broader range of facilitative sorts of tools, in conjunction with a backdrop of tougher regulation, which you really would only need to use in the minority of cases. I would argue particularly that you really need two different regulatory tracks. The first is a best-practice track for those companies that are capable of going beyond compliance with existing regulation.

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[134]   *Report on European Study Tour July 1998*, reproduced as Appendix One, pp 9, 17-18, 30-31.

[135]   N Gunningham, R Johnstone & P Rozen, *Enforcement Measures for Occupational Health and Safety in NSW: Issues and Options*, April 1996.

One problem in the past has been that the law has simply said that you have to get to a certain standard, but once you get to that standard nobody bothers to encourage you to go further. The ideal, as Dupont would say, is that we want zero accidents. Now, you may never get to zero accidents, but we need a legislative approach that encourages and rewards best-practice companies for pursuing that goal. We have not got such a legislative approach at the moment. One vehicle for encouraging that is occupational health and safety management systems. Companies that genuinely and seriously adopt a management systems approach that is really based on total quality management principles are locking themselves into continuous improvement and cultural change. So they are actually considering health and safety matters at every stage in the production process and across the entire organisation; whereas, often, your average organisation only thinks of health and safety as an add-on, if it thinks of health and safety at all.

So I think that health and safety management systems have enormous potential to take at least better companies from where they are now to where they want to be, which is heading towards zero accidents, though they will probably never reach that goal. So far, our legislation does not really encourage or reward that approach, although in a couple of areas in New South Wales in the construction industry, to give the Government and/or WorkCover credit, they have actively tried to encourage management systems. So, one track is for best-practice performers to be rewarded, facilitated and encouraged to go beyond compliance in order to achieve far more than the law requires.

The other track is for the run-of-the-mill performers, the many small- and medium-size companies which really do not have that sophistication or capacity. For even for them, you are obliged to use conventional regulatory techniques. But, even then, there are some innovative approaches which we have not really tried very much in Australia, but which have been experimented with in the United States. I am referring to the Minnesota scheme for printers, which I can talk about more later on, of sending in outside auditors to advise, encourage and help, against a backdrop of regulation. I can talk about that in a few moments, if you would like me to.

Sometimes, to apply side pressure is a nice lever on small companies; that is to say, sometimes small companies are dealing with much larger companies that may choose to impose requirements on the smaller companies. So, in a related area of environment, if Dow Chemicals says, "We will only deal with clients who implement the following standards of environmental performance, then look at the small suppliers and say, 'This is what we expect of you, this is where we expect you to be in three years, so we will help you to get there, and we will also send in our audit team from time to time to check up that you are actually doing these things. But, be advised that if you do not achieve these standards, we will not be dealing with you any more.'"
Because of the imbalance of power and size between Dow Chemicals and the small suppliers it is dealing with, that is a very credible threat. The same can be true in health and safety. But, what is the incentive for the large company to impose those sorts of conditions on the smaller companies it is dealing with? That is where government might play a significant role. Not every large

company will automatically feel it wants to police the behaviour of its small suppliers and buyers but you could give the large company rewards for doing so, or in some cases make it a requirement to do so.

For example, you could say, "If you want to get a government contract, if you want to tender for a large construction contract in New South Wales, then you must meet the following health and safety requirements, one of which is that you must commit yourself to be responsible for not just your behaviour but for the behaviour of all your subcontractors...

Contracts are a pretty powerful incentive. Governments are large players in the game, and if you have to meet standards every time you bid for a government contract, it is not that much harder to have it flow on to other areas. You can also give rewards. If you were to adopt my suggestion of a two-track regulatory system under which the better players are given some rewards - of regulatory flexibility, being allowed to self-police to a fair extent, or are given a logo or whatever, or public relations advantages, and much more autonomy in the way they are regulated - then you attract enough people into your regulatory flexibility track, but you make it a requirement of being under that track that they have to be responsible for the people up and down the supply chain. Of course, the key to making that work is giving them enough incentives to actually want to go down the regulatory flexibility track, rather than the conventional regulation track, otherwise it is not going to work.[136]

6.7.3   Professor Gunningham has recently published two papers which examine the adoption of new forms of OHS regulation in the United States and the United Kingdom, and draw out lessons for development of a legal and enforcement framework in which employers are encouraged to adopt OHS management systems.[137]   The papers spell out in some detail the sort of incentives that can be used to encourage employers to go down "track two" and adopt an OHS management system. The incentives identified include:

- administrative benefits, such as offering a partnership/co-operative approach to regulation to enterprises who agree to adopt a safety management system, blitzing recalcitrants who chose not to adopt such a system, or abbreviating an inspection where inspectors are aware that a safety management system is in place;

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[136]   *Evidence*, 30/10/97, Professor N Gunningham, pp 2-4.

[137]   N Gunningham, "Towards Innovative Occupational Health and Safety Regulation", *Journal of Industrial Relations* 40(2), June 1998, pp 204-231; N Gunningham & R Johnstone, *The Legal Construction of OHS Management Systems*, paper presented to Amsterdam Conference on OHS Management Systems, 21-24 September 1998.

- logo or other publicity or public relations benefits to enterprises who adopt management systems;

- making implementation of a system a condition for granting self-insurer status;

- making implementation of a system a condition for tendering for major government contracts;

- providing "up front" bonuses under Workers Compensation insurance to systems-based firms;

- subsidies to kick start a systems based approach in firms which, by reason of their size, economic circumstances or other factors, would otherwise be unlikely to adopt such an approach; and

- various forms of regulatory flexibility for those adopting a systems based approach, including: reducing the likelihood of inspections and prosecutions, less prescriptive regulatory requirements, and reductions in penalties if prosecutions take place.[138]

Professor Gunningham has emphasised the need for Government to establish minimum criteria which OHS management systems must meet, together with a system of third party auditing, with auditors acting in effect act as "surrogate regulators".[139] He also suggested that the most effective strategy for dealing with firms which do not adopt an OHS management system is targeted inspections, with low level enforcement where appropriate (ie provisional improvement notices, on the spot fines).

6.7.3   The enforcement implications of the use of OHS management systems was discussed in a particularly incisive submission received from Mr Allan Kemp. In his submission, Mr Kemp recommended the establishment of a three-tiered approach by WorkCover NSW. Mr Kemp's proposal can be summarised as follows:

Level 1: Companies above a certain size (such as the qualifications for self insurers - 750 employees) would be required by legislation to adopt an OHS management system acceptable to or accredited by WorkCover. Monitoring of the OHS management system used would be conducted through a combination of: authorised union officers; OHS Committee; third party accredited auditors; and the workers compensation insurer.

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138   N Gunningham & R Johnstone, *The Legal Construction of OHS Management Systems*, op cit.

139   Ibid.

Level 2: For companies outside this range, WorkCover could require the implementation of an OHS management system after an inspection, or the courts could require one after a successful prosecution.

Level 3: SMEs (defined, for example, as those companies with a workers compensation premium of less than $50,000) would be required to adopt a systematic approach to risk management based on the six-step model referred to above. WorkCover's publication HAZPAK should be used to assist SMEs together with the self auditing material included in the SafetyMAP system.[140]

6.7.4   The initial submission received from Professor Michael Quinlan drew attention to the need for the development of new enforcement strategies and the provision of additional training to inspectors, in the context of promoting the use of OHS management systems or a systematic approach generally by SMEs. Professor Quinlan pointed out that, where some employers are devoting considerable resources to lifting their OHS performance, it was particularly important for the Government to take action against those employers who failed to take similar action.

> It is now increasingly recognised that compliance strategies used in the past have not been especially effective. As already noted, in some respects NSW has lagged behind other states in not employing a systematic workplace audit system, seeking to promote a more systematic approach to OHS management on the part of employers and training inspectors to a point where they can effectively implement performance standards built around the notion of a safe system of work...
>
> There is growing support amongst informed observers both for greater use of enforcement and an extension of the array of penalties which may be brought to bear in relation to breaches of OHS standards. Nor would such a step, if carefully implemented, be inconsistent with greater activism and responsibility by the parties... For example, to encourage some employers to achieve best-practice while allowing others to thumb their noses at OHS standards creates a sense of confusion amongst employers who are uncommitted as to how seriously they should view OHS. It can also lead to a justified sense of outrage amongst those employers and workers who are trying to lift their OHS performance. Finally, claims that OHS is good for business will not convince all and attempts to persuade interested parties to lift their efforts are liable to have far more effect if instances can be shown of how seriously the state will deal with those who flout its laws.[141]

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[140]   *Submission*, 4/4/98, Mr A Kemp, pp 1-2.

[141]   *Submission*, 5/5/97, Professor M Quinlan, pp 47-49.

6.7.5   Professor Quinlan went on to recommend the development of a range of new penalties designed to more closely fit the relevant offender These recommendations were taken up in the Committee *Interim Report*, where the Committee recommended the use of a range of non-monetary penalties in addition to existing penalties.[142] Professor Quinlan also recommended the use of targeted blitzes of particular regions and industries, another recommendation taken up in the Committee's *Interim Report*.[143]

6.8   Recommendations

> **Recommendation 6:**
>
> The Committee recommends that the *Occupational Health and Safety Act* be amended to give statutory recognition to the use of OHS management systems and risk management as key tools in meeting the general duties requirements imposed upon employers in section 15 of the Act.

> **Recommendation 7:**
>
> The Committee recommends that the *Occupational Health and Safety Act* be amended to impose a duty upon employers to adopt a systematic approach to the management of occupational health and safety. This systematic approach could be as simple as the application of the six-step approach to OHS being promoted by WorkCover NSW in its community awareness campaign, or it could be as complex as the application of an accredited OHS management system.

> **Recommendation 8:**
>
> The Committee recommends the development of a Code of Practice on a systematic approach to occupational health and safety, including the application of an accredited OHS management system.

> **Recommendation 9:**
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> The Committee recommends that the *Occupational Health and Safety Act* be amended to require employers to consult with their employees at all stages of the implementation of a systematic approach to the management of

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[142]   *Interim Report*, Recommendations 14, 15.

[143]   Ibid, Recommendation 20.

occupational health and safety. There must be an explicit requirement for consultation in relation to the organisation of work.

Recommendation 10:

The Committee recommends the development of a Code of Practice containing guidance on consultation in the implementation of a systematic approach to the management of occupational health and safety, and specifically in relation to consultation about the organisation of work.

Recommendation 11:

In developing the Code of Practice referred to in Recommendation 10 and in establishing a system for the accreditation of OHS management systems, considerable attention should be given to the extent to which an OHS management system provides for genuine employee participation in decision making about the organisation of work.

Recommendation 12:

The Committee recommends that the amendment of the *Occupational Health and Safety Act* and the development of the Codes of Practice referred to in Recommendations 6-10 be followed by a major community awareness campaign about the rights and duties of employees and employers in relation to consultation about the organisation of work in the implementation of a systematic approach to the management of occupational health and safety.

Recommendation 13:

The Committee recommends that the community awareness campaign referred to in Recommendation 12 be followed by the provision of resources by Government to enable authorised trade union officers and employer associations to assist to energise consultation in workplaces.

Recommendation 14:

The Committee recommends that the Industry Reference Groups established under the provisions of the *Workplace Injury Management and Workers Compensation Act* develop industry specific guidance material, to assist small and medium sized enterprises to implement a systematic approach to the management of occupational health and safety. The Committee recommends a focus upon the 5 or 6 most serious hazards or OHS issues in each industry and the provision of clear advice about how these hazards or issues can be addressed.

Recommendation 15:

The Committee recommends that WorkCover NSW provide funding to employer associations, Chambers of Commerce and other networks to which small and medium sized enterprises belong and, in effect, channel its advisory and educative activities through these bodies. The Committee recommends that consideration be given to the placement of WorkCover staff within employer associations, Chambers of Commerce etc for periods of up to 12 months at a time.

Recommendation 16:

The Committee recommends that WorkCover NSW work together with other Government agencies which provide advice (or undertake regulatory functions in relation) to small and medium sized enterprises (SMEs), with a view to developing complimentary guidance material which can be integrated into existing management systems of SMEs. The Committee also recommends that WorkCover utilise the networks and contacts which other Government agencies have with SMEs to enable guidance material to be effectively channelled to SMEs.

Recommendation 17:

The Committee recommends the implementation of the two track enforcement model recommended by Professor Gunningham. That is, organisations which adopt accredited OHS management systems should be freed of some regulatory burdens, and enforcement activity and prescriptive regulatory requirements should be targeted at those organisations which do not adopt accredited OHS management systems.

Recommendation 18:

The Committee recommends the development of appropriate financial incentives within the workers compensation premium structure, such as bonus/malus schemes, to encourage the adoption of OHS management systems.

Recommendation 19:

The Committee recommends the development of performance indicators for employers adopting OHS management systems, including performance indicators to measure and assess the level of consultation about the organisation of work.

Recommendation 20:

The Committee recommends that WorkCover NSW undertake careful monitoring, and commission a detailed review after three years, of the outcomes from the introduction of the requirement for a systematic approach to the management of occupational health and safety.

Chapter Seven
Social and Economic Costs

7.1   **Questions posed in the Committee's *Issues Paper***

7.1.1   Paragraph B of the Committee's terms of reference required the Committee to inquire into and report upon the "social and economic costs to the community of death and injury in the workplace". The Committee's February 1998 *Issues Paper* included a brief discussion of both the economic and the social and human costs of workplace death, injury and disease. The *Issues Paper* briefly referred to criticism of the available OHS data, that had been put to the Committee during the first stage of the Committee's inquiry in 1997. The Committee then posed two questions upon which submissions were invited:

4. How can the compilation and presentation of information by Government about the social and economic costs of death and injury in the workplace be improved?

5. How can organisations be encouraged or compelled to report upon their workplace safety performance?

7.2   **Economic costs**

7.2.1   The Committee's *Issues Paper* referred to the work of the Industry Commission in its *Work, Health and Safety* inquiry to estimate the economic costs to the community of workplace death, injury and disease. This remains the most comprehensive attempt to estimate these costs. The Committee has not received any evidence which contradicts the figures produced by the Industry Commission. The findings of the Industry Commission are summarised below:

Australia-wide figures:

- between 20-23 million working days are lost each year due to work-related injury and disease (this compares with 0.467 million working days lost to industrial disputes in 1994);

- in any two week period up to 1.8 % of the workforce will be performing their normal duties at less than full capacity due to work-related health problems;

- **the total cost of work-related injury and disease to injured workers, their employers and the community is estimated to be more than $20 billion per year;**

- of this, employers bear about 40 % (workers compensation, loss of productivity and overtime; injured workers bear about 30 % (loss of income, pain and suffering, loss of future earnings, medical and travel costs); and the community bears about 30 % (social welfare, medical and health costs, loss of human capital);

- the cost to the Commonwealth Government is about $ 3 billion per year (social security);

NSW and other states:

- **the share of the total cost of workplace injury and disease borne by NSW was estimated at between $6.3 and $6.7 billion in 1992-93**;

- the cost to State Governments through the health system was estimated at $600 million per year;

- the percentage of hospital admissions resulting from workplace injuries and disease was estimated between 10-20% of all admissions. [144]

7.2.2   As outlined in Chapter Two, the Industry Commission recognised the fact that less than 50 % of all work-related injuries and illness appear in workers compensation data. The estimates summarised above recognise that the indirect costs of work-related injuries and disease to injured workers, their employers and the community are at least three times the direct costs in terms of workers compensation payments.[145] Bearing that in mind, the annual workers compensation claims expenses premium paid in NSW in 1996-97 was $2.4 billion.[146] This would appear to confirm the Industry Commission's estimate that the cost of work-related injury and disease in NSW was at least $6.3 billion in 1992-93 and has risen since that time.

7.3   Social and human costs

7.3.1   As mentioned in the Committee's February 1998 *Issues Paper*, the Committee has had the social and human costs of workplace death, injury and disease brought to its attention through a number of very moving submissions received from the victims of workplace injuries and disease and

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[144]   Industry Commission, *Work, Health and Safety*, op cit, pp 17-20.

[145]   Ibid, pp 8, 17.

[146]   *WorkCover NSW Annual Report 1997*, p 90.

from the families of people who have died as a result of workplace accidents.[147] This inquiry has had a very powerful human face to it.

7.3.2   A common theme of these submissions was the enormous impact which workplace death, injury and disease has upon individuals and their families. This impact was summarised powerfully in an article written by Ms Fran Kavanagh, the founder of Advocates for Workplace Safety.

> Too often it is assumed there is a fixed pattern to coping with the death of a family member. The rituals of funerals and memorial services are organised, the family grieves, and after six weeks, it is expected that they are now ready to get on with their lives. This is around the time when phone calls, letters and friends stop dropping around.
>
> But there is no magic time when grieving finishes and healing begins. In dealing with families who have lost a family member in a workplace accident, they speak of the trauma and lack of support and understanding from the community. The abject grief at losing a partner, parent, child or sibling, can have lasting effects for many years to come.
>
> Workplace deaths are often brutal and traumatic. Families not only have to cope with the shock and trauma of the accident, but the way in which it occurred.
>
> The way the news of the death is conveyed can have an effect on the grieving of families. If it is handled with sensitivity and compassion, the grieving process, although never easy, is a little easier to bear.
>
> Families confronted with workplace death have to deal with a whole range of issues that are, more often than not, alien to them. Firstly, they are told of the death, and have to identify bodies, arrange funerals, manage to pay bills and sort out work arrangements. They are then thrown into seemingly endless days, weeks and even years of mentions, hearings and court dates for coronial and industrial courts.
>
> Many do not know the difference between a mention and a hearing, and are totally confused by the whole process.
>
> Inquests, which deal specifically with the cause and manner of death, are particularly difficult, as families realise that the person they loved most in the

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[147]   See for example *Submissions*, Mr S Teale, 6/6/97 & 15/5/98; Mr J Lyons, 20/6/97; Mr J May, 27/6/97; Injured Employees Association, 27/6/97; Mr A Craig, 2/7/97; Ms M Alber, 4/8/97; Advocates for Workplace Safety, 7/8/97 & 19/11/97; Tamworth FarmSafe Group, 4/11/97; Mr B Findlay, 28/5/98; Brain Injury Association, 16/7/98; Womens' Health in Industry, 29/7/98; Mrs M French, 10/98; Injuries Australia, 26/8/98.

world has become irrelevant to the legal process. They become another statistic, just a number in the system, and constantly referred to as 'the deceased'. During these times families need support of others who have been through the process. Many courts today have counselling available for families, and I think that the notion of the victim being nameless and faceless is beginning to change.[148]

7.3.3   Advocates for Workplace Safety submitted to the Committee that WorkCover should provide funding for the establishment of support services for the families of those killed or injured in the workplace. Services would include the provision of a grief counsellor, premises for support group meetings, travel expenses for visiting families, assistance in the drafting of Victim Impact Statements and court support for both coronial and Industrial Relations Commission processes.[149]

7.3.4   Another theme of these submissions was the way outcome for injured workers, who often find it very difficult to re-enter the workforce, and are effectively marginalised. This point was made particularly forcefully in the report of the Industry Commission.

> All of the injured workers that participated in this inquiry wanted to return to work. Since their injury, most had suffered a substantial deterioration in living standard, both financially and socially. In cases of serious incapacitation, the costs can be extreme. As one participant put it, 'The toll on human life cannot be taken too lightly either with its sequelae of suicide, mental disturbance, marriage breakups, domestic violence and feelings of alienation, low self-image and failure' (sub.113, p.4).
>
> The results of the PSM survey indicate that those who are permanently incapacitated suffer the most serious disadvantage. The survey revealed that there were an estimated 330,000 persons of working age who were suffering a confirmed work-related health problem. About half of them had been unable to work because of their condition.
>
> In the case of those unable to work at all, over 85 per cent had been unemployed for over a year and almost 35 per cent had not worked for over five years. The weighted-average income of these workers was $9500. Close to 90 per cent had been working in the job which caused the injury or illness for over a year. The contrast between their stable employment experience prior to being injured, and their disadvantaged position after injury, illustrates the social cost of work-related health problems.

[148]   F Kavanagh, "Life after a workplace death", *Complete Safety Australia*, February 1997, p 36.

[149]   *Submissions*, Advocates for Workplace Safety, 19/11/97, p 1.

> Over 270 000 workers have had to permanently reduce the amount of paid work they would like to do, or to change jobs because of the long-term effects of work-related injury or disease. Many of these workers would have suffered a substantial pay cut as a result.
>
> Most of the workers who suffer a work-related injury not only have trouble performing their work activities, but their private lives are also affected. The worker suffering from hearing loss due to industrial noise has difficulty communicating in the workplace but, more importantly, is denied most of the social interaction everyone else takes for granted. This can result in the breakdown of their mental and social well-being.
>
> Perhaps the most forgotten group are retirees. The PSM survey revealed that 6 per cent of retirees were suffering from a confirmed work-related health problem and a further 10 per cent believed that their health problem is work-related. Although injury may not always reduce retirees' incomes, it adversely affects their lifestyles.[150]

7.3.5   When representatives of Injuries Australia gave evidence to the Committee in August 1998, they gave a number of examples of injured workers who had "fallen through the cracks". They also made reference to support groups which had been established around the state, which were providing retraining for injured workers, training which was the responsibility of workers compensation insurers.[151]

7.4   Victim Impact Statements

7.4.1   The Committee's *Interim Report* of December 1997 contained a brief discussion of the possible application of Victim Impact Statements in prosecutions for breaches of the *Occupational Health and Safety Act*. The *Interim Report* referred to the submissions received from Mr Stanley Teale, and Advocates for Workplace Safety, which included copies of Victim Impact Statements. Reference was made to the deliberations of the McCallum Panel of Review on this issue, and to the provision in the *Victims Rights Act 1997* for the use of Victim Impact Statements in certain proceedings. The *Interim Report* expressed the Committee's support for Victim Impact Statements to be admissible in sentencing under the *Occupational Health and Safety Act*.[152]

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[150]   Industry Commission, *Work, Health and Safety*, op cit, pp 23-24.

[151]   *Evidence*, 26/8/98, Mr G Cooper, pp 5-12.

[152]   *Interim Report*, pp 61-64.

7.4.2   It appears that without statutory backing the Committee's recommendation for the admissibility of Victim Impact Statements will be ineffective. The Committee received a further submission from Mr Stanley Teale which expressed dismay at the decision of Justice Fischer, then President of the Industrial Relations Commission, to refuse to admit into evidence the Victim Impact Statements presented in relation to the death of Mr Teale's son during the sentencing of the employer for a breach of the *Occupational Health and Safety Act*. The judgment stated that the provisions of the *Crimes Act* and the *Victim's Rights Act* in relation to Victim Impact Statements were relevant only to the Supreme and District Courts and made no reference to the Industrial Relations Commission. Ultimately, the statements were allowed to be tendered "by consent on a public interest basis". However, Justice Fischer commented that,

> While in such case receiving the statements I note that the tenor of this case does not relate to death or even injury contemplated under the *Victim's Rights Act 1996.* The tenor of this case relates to breaches of safety standards and in principle and in the law the *Victim's Rights Act 1996* does not relevantly apply.[153]

7.5   Developments in the collection and presentation of OHS data

7.5.1   On 24 August 1998, the Committee held a round table meeting involving representatives of WorkCover NSW, the National Occupational Health and Safety Commission (NOHSC), the NSW Employers' Federation and the NSW Labour Council, to explore current developments in relation to the collection and presentation of OHS data. Ms Michele Patterson, Acting Assistant General Manager of WorkCover NSW, provided a detailed briefing on WorkCover's current data sources, their strengths and weaknesses and current developments. Ms Patterson indicated that WorkCover's databases were currently under review. She said that WorkCover recognised that its OHS prevention work would need to become more responsive to trends identified from data. She specifically referred to efforts to consolidate WorkCover's current databases and the use of data in trial programmes with industry teams for the construction industry and the health and community services sector.

> At the moment each of the databases for the subsets I outlined is separate, which means that, for example, if we were to put together a profile on a client we would need to monitor all the databases separately to build that profile. For this and other reasons the databases are currently under review. We are aiming to comprehensively analyse existing information systems with the

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[153]   *NSW WorkCover v North Power*, No IRC 5182 of 1996, 9/2/98, per Fischer P, at 15.

intention of developing an integrated OHS client-based database. That is where we are heading...

It is recognised at both the State and national levels that OHS data is to play a more important role in shaping the operational functions of OHS agencies, which is a trend right around the country. Detailed information on the nature of accidents and injuries, incidence of injuries and claims costs, along with general trend data will be fundamental to the setting of WorkCover's business plans.   Although much of this data is currently available, WorkCover is reviewing the type of data captured and how it can be better used to identify areas of need. In this respect, WorkCover will identify the key business indicators with respect to safety outcomes in workplaces in New South Wales. Key OHS data indicators used to identify major initiatives and associated resource needs will drive WorkCover's planning process and, in turn, enable the OHS division to be more pro-active in its management of OHS in New South Wales. I earmark that as a significant trend in the organisation...

WorkCover is currently undertaking a trial program for delivery of services to health and community service industries, and the construction industry. A major element of the industry teams trial is to identify data needs specific to those industries, collect data where available, and, most importantly, use it to inform the priority actions of the teams. This would appear to be the future trend in using data as a fundamental driver in WorkCover's business operations.[154]

7.5.2   Representatives of the Employers' Federation and Labour Council spoke about the keen interest of the Workers compensation Advisory Council in the development of WorkCover's database.   They emphasised the need for timely information and the provision of more detailed information about the causation of injuries.   They also foreshadowed the heavy reliance which would be placed on data by the Industry Reference Groups, to be established under the provisions of the *Workplace Injury Management and Workers Compensation Act.*[155]

7.5.3   Professor Dennis Else, Chairman of NOHSC, provided a briefing on development with OHS data at a national level.   He referred to the development of the national coronial database as one of the most significant initiatives under way.   Professor Else identified two major deficiencies in current OHS data.   These related to: firstly, growing gaps in the coverage of OHS data as employment patterns change and people move from large companies to self employment; and, secondly, the lack of data on"positive

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[154]   *Evidence*, 24/8/98, Ms M Patterson, p 8.

[155]   Ibid, pp 12-18.

performance indicators" which provide information on the preventive activity undertaken by organisations.

In a society that is changing its employment base from one of large companies and very stable contractual arrangements over long periods, it is found that the national data set tends to cover less of the nation's employment base as more people move into the self-employed and small contract bases... In reflection on that, I would say that most significant gaps relate to employment status as society changes employment structures, disease rather than traumatic injury and the fact that all of these data sets tend to focus more heavily on outcome than on causality...

The second most significant shortcoming relates to prevention. I raise the issue of positive performance indicators and moving beyond our measures of the target in terms of the outcome measure. If we look at those companies that are engaged most actively with prevention we find that they are attempting to move upstream in their measurement of performance from injuries and incidents to the exposures in which people are engaged, the systems that are in place or not in place to control those exposures, and, even further behind that, the climate in the workplace.... Organisations that are trying to engage upstream in their measurements will measure exposures such as the environment, the equipment people are using and the condition that is in and the extent to which work practices are implemented. For instance, if a permit-to-work system is meant to operate, industries are starting to measure the percentage of time that the permit to work is actually used when the job is being done...

Behind exposures would be the systems, whether they be purchasing systems, training systems or auditing systems. Again, if as a State or a nation we are interested in the level of risk in workplaces, we should be interested in the extent to which health and safety practices are built into purchasing decision making. We should be interested also in the extent to which health and safety practices are built into education and training systems. For example, we could measure the percentage of graduates from any New South Wales TAFE program that will have been exposed adequately to health and safety awareness and have that built into their competency. The final level, which is more atmospheric and climatic, is related to the atmosphere measures of values, beliefs and norms.

At an earlier seminar [the late] Warren Haynes mentioned that ICI was measuring the percentage of workers who believed that the company's goal of no injuries to anyone ever was achievable. Initially the company reported that less than 40 per cent of its workers held that belief. By the time Warren reported, that figure stood at 67 to 70 per cent. Similarly, such measures can be taken through sampling at State or national level. The National Occupational Health and Safety Commission carries out samples of the

atmosphere via the ANOP survey scheme of telephone polls. The survey conducted earlier this year showed that less than 25 per cent of respondents throughout Australia—which was about 2,500 respondents but constituted an adequate survey—thought that nearly all accidents and injuries were preventable. That is an interesting measure to be taken as a climate level.[156]

7.5.4   Professor Else also spoke to an idea flagged in the Committee's February 1998 *Issues Paper*. The Committee had drawn attention to the trend for Governments at all levels to publish State of the Environment reports, periodically. These reports contain a wealth of information about changes in the environment, measurable against a range of environmental indicators. They are designed to enable trend information to be gathered and interpreted, and to influence decision making about environmental issues.[157] The Committee raised the possibility of the concept of State of the Environment reporting being applied to OHS, through the publication by WorkCover NSW of a State of the Workplace report, which would provide a snapshot in time of OHS in NSW, using a range of textual and statistical information, and key OHS performance indicators. Professor Else expressed strong support for this idea. However, he queried how often such reports would need to be prepared and suggested that annually may be too often.[158]

> The fifth question relates to the practicability and utility of the state of the workplace report that was in your February 1998 *Issues Paper*. I think it is a very good suggestion. As is indicated by the extent to which the industry commission report is quoted, I think there is a real thirst for that sort of information where it has been brought together in one place. I am not sure how frequently it should be done. The state of the working environment report from Western Australia, which uses a similar language, really only goes to the presentation of the statistical data from compensation; it does not go any further than that. In regard to the information that you have suggested should be brought together, which I think would be very worthwhile, I wonder whether that needs to be done on an annual basis or whether it is more the sort of thing which you simply gather together every five years, and that is quite sufficient for people to make reference to because things are not changing

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[156]   Ibid, Professor D Else, pp 9-10.

[157]   For further detail about the concept and application of State of the Environment reporting in Australia see D Blunt, *State of the Environment Reporting*, Briefing Paper for Law and Justice Committee, May 1998.

[158]   The *Protection of the Environment Administration Act 1991* requires the NSW Environment Protection Authority to produce a State of the Environment report once every two years. The *Local Government (Ecologically Sustainable Development) Act 1997* requires that local councils publish a comprehensive State of the Environment report once every four years.

dramatically in those sorts of time periods. I suppose it all depends on where one wants to allocate the resources. It would be a natural thing which could be done State by State and collated so that people could make the comparisons.[159]

7.5.5   During the European study undertaken by the delegation during July 1998, the opportunity was taken to question a range of experts as to whether anything akin to State of the Workplace reporting had been attempted in Europe. The delegation received generally positive feedback about the concept of State of the Workplace reporting. The point was made that, due to the limitations inherent in workers compensation data, there would need to be use made of some sort of labour force survey to provide a more accurate picture of the extent of work-related injuries and disease.[160] The report on the study tour includes some information about a "climate survey tool" developed by the Health and Safety Executive in the United Kingdom. It was suggested that the use of this climate survey tool was now so widespread that it could be possible to use the collected data to prepare a report on the "national OHS climate as perceived by employees".[161]

7.6   Company reporting of OHS performance

7.6.1   On 25 August 1998, the Committee convened a round table meeting to consider the issue of company reporting of OHS performance. Participants included representatives of the Australian Institute of Company Directors, Annual Report Awards Australia Inc, NOHSC, WorkCover NSW, Injuries Australia, Orica and NorthPower. (Orica and NorthPower had been invited to participate after they were identified as examples of companies which include detailed OHS information in their annual reports to shareholders.)

7.6.2   The meeting took as its starting point the recommendation in the Industry Commission's *Work, Health and Safety* report for the Institute of Company Directors to be invited to draft guidelines on the disclosure by companies of their health and safety records in their annual reports.[162] Representatives of the Australian Institute of Company Directors (AICD) indicated that, unfortunately, this recommendation had never been conveyed to the

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[159]   *Evidence*, 24/8/98, Professor D Else, p 11.

[160]   This was the strategy adopted by the Industry Commission in its *Work, Health and Safety* inquiry. See *Work, Health and Safety*, op cit, pp 8-9.

[161]   *Report on European Study Tour, July 1998*, reproduced as Appendix One, p 51.

[162]   Industry Commission, *Work, Health and Safety*, op cit, p 194.

Institute. Therefore no action had been taken on it.[163] Professor Dennis Else, Chairman of NOHSC, also indicated that NOHSC had not taken any specific action in relation to this recommendation.[164]

7.6.3   During the meeting a number of companies were identified as being at the forefront of voluntary reporting on OHS in annual reports to shareholders. In addition to Orica and North Power, these companies included Integral Energy, WMC, CSR, Boral, and North. There was broad consensus in the meeting that disclosure of OHS performance in annual reports was a developing trend and that many large companies, particularly in the mining, energy and chemicals industries, were already doing this on a voluntary basis, and were increasingly integrating OHS information with environmental information, and in some cases information on a broad range of ethical issues.[165]   There was consensus that there should be ongoing encouragement of such reporting. However, there were different views expressed as to whether such reporting should be made compulsory.

> Current best practice is that a large number of major international and Australian companies listed on the Stock Exchange already report extensively on occupational health and safety issues. Many companies have been doing that for quite some time, as Alan and Ian have already indicated. Those statements include a fairly wide-ranging outline of the policies, performances and strategies of companies. Obviously, they are slanted towards the particular industries in which a company is involved. In some cases they are published as a separate report. Corporate positions on broader values are being reported increasingly by leading organisations internationally. It is a question not only of safety but also of issues such as human rights, environment and so on.

> Quite clearly the reasoning behind this is ... that, more and more, companies believe that an understanding of the broader values is important to shareholder perceptions of those organisations, the way in which markets respond to the performance of companies and the future value of companies in the marketplace. Safety is a critical issue, but it is also part of a trend toward those wider issues becoming more integrated into statements and disclosure of corporate performance. At the moment virtually all of this additional reporting is undertaken voluntarily. There is no obligation under the corporations law or under the Australian Stock Exchange listing rules for public companies to disclose occupational health and safety, as has already been rated, other than the continuous disclosure and corporate governance

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[163]   *Evidence*, 25/8/98, Mr I Dunlop, p 12.

[164]   Ibid, Professor D Else, p 13.

[165]   Ibid, Mr I Dunlop, p 11.

requirements of what are considered to be material issues which affect or impact on the company's past and future performance. With regard to the future of a company in the broader sense, a number of organisations would argue that the environment, health and safety and so on are becoming material issues related to the future of those organisations, and, hence, are reporting in that context.

That is clearly a matter of judgement and there are no strict guidelines on these newer values that are entering the debate. The considerations involved in the safety arena are complex. Clearly the larger companies more than fulfil a lot of what might be regarded as a reasonable reporting requirement and the reports containing health and safety statements are often extensive. The real issue is whether disclosure should become mandatory as a means of improving performance, or whether it should be a matter of encouraging continued improvement on a voluntary basis. There are already quite extensive reporting requirements under WorkCover and workers compensation and OHS legislation. One can argue that the workers compensation cost driver is in itself a major stimulus to improved performance, and is possibly more effective than mandatory reporting as such. There has been a major improvement into jurisdictional reporting since the 1995 report, and the development of database statistics on safety performance has considerably improved over that period. The accurate allocation of costs for safety performance where they are incurred, rather than the averaging-out process that has existed in the system in previous years, is having a salutary effect on companies' attention to these issues, purely as a self-interested cost driver.

In the final analysis, the key reason that people move into disclosure and are paying close attention to this is because it makes sound business sense. There are major ethical, moral and social issues involved, but it is also a clear business imperative in terms of effective performance. Essentially a safe and health workforce is also an efficient workforce. There are self-interested drivers in this which lead toward improved performance and one could argue that the cost driver is a more effective mechanism than having mandatory reporting. An alternative view would be that any mechanism, such as regular reporting, which obliges company directors, particularly in smaller companies, to recognise the occupational health and safety responsibilities may well improve safety performance as well as protecting the directors, because they have clear obligations under the occupational health and safety legislation...

There is a concern that reporting generally in annual reports is becoming very extensive. A wide range of additional issues are being added into the reports. The reports are becoming so voluminous that in many cases the attention is not being paid to them that used to be paid to them. Shareholders are asking for smaller reports and the concise form of annual reporting, rather than the full reports that they have been accustomed to getting. One concern is that

reporting by its nature is a reactive process and tends to lead to a concentration on the symptoms of safety performance, which are the accident rates and so on, rather than on the underlying safety health of the organisation. The institute regards the key factor as the need to have a pro-active approach to safety health of organisations, which should be looking behind the statistics toward the fundamental structure of the organisation, the way in which safety is approached; attempting to identify the inherent potential failure points in an operation which can lead to accidents in the first place, rather than a concentration on the results of those accidents after the event.

The issue is how to get that effectively in place? Mandatory reporting may be one of the less effective ways of addressing this, rather than other avenues. We fully support the voluntary reporting of OHS matters and we would agree with the range of issues that have been talked about: there needs to be clear policy; the management systems must be in place to ensure that policy is implemented; it needs appropriate training to ensure that people understand what the requirements and the potential risk issues are; obviously we need to measure what has happened; and the follow through by proper investigation is critical to identify potential shortcomings for the future. It is a critically important issue and I must apologise that, in the time we have been aware of the Committee's request, we have not had an opportunity to discuss it more widely within the institute. We have a concern about how mandatory reporting would work across the spectrum of the large, small and medium companies. We would propose to discuss that aspect further within the institute and to revert to the Committee in due course, once we have had a chance to do that in more considered fashion.[166]

7.6.4   Following the round table meeting, Mr Dunlop subsequently published an article in the *Company Director* journal, which neatly summarised the views expressed, and called for members of the AICD to submit their views to the Institute, to assist in the further development of the Institute's position. Interestingly, Mr Dunlop commented that the decision of some listed companies to include OHS performance information in their annual reports may be the result of a view that it is actually required by the ASX listing rules.

There is no specific requirement under the corporations Law or ASX listing Rules for public companies to disclose their OHS policy or performance. However, leading companies take the view that, particularly those working in difficult operating environments, that, quite apart from the threshold issue of corporate responsibility, disclosure of safety performance is appropriate given that safety is a material issue impacting upon the company, hence it is required under the continuous disclosure and corporate governance

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[166]   Ibid, Mr I Dunlop, pp 10-12.

provisions of the listing Rules. These provisions do not of course apply to non-listed companies.[167]

7.7   Regional co-operation in information sharing

7.7.1   As outlined in the *Report on the European Study Tour*, reproduced as Appendix One, the Committee's attention has been drawn to the International Labour Organisation (ILO) Collaborating Safety and Health Information (CIS) network. The idea of the network is a means for the exchange of information and ideas about OHS problems and strategies, with a particular focus on making information readily available to developing countries. The network has been in existence since 1959 and has grown to include 120 national and collaborating centres. In Australia, the National Occupational Health and Safety Commission (WorkSafe Australia) is a national CIS centre and WorkSafe Western Australia is a collaborating centre.

7.7.2   The delegation was particularly interested in this network as a result of an earlier visit by a Committee member, the Hon Janelle Saffin MLC, to the ILO's Asian headquarters in Bangkok. ILO representatives in Bangkok had expressed interest in having WorkCover NSW become a CIS collaborating centre. The Committee subsequently wrote to WorkSafe Western Australia to find out about their experience in being a CIS collaborating centre. The Committee has since received a reply from the Commissioner of WorkSafe Western Australia, Mr Neil Bartholomaeus, in which he expresses strong support for the CIS network and his organisation's continuing participation as a collaborating centre.

> We believe that such regional cooperation on occupational safety and health is valuable in developing important social and economical relationships in the Asian region. This involvement is an extension of existing cooperation between WorkSafe Western Australia and the governments of Malaysia, Indonesia, Thailand, Singapore and China on occupational safety and health... The network is an important service for the collection and dissemination of information on the prevention of occupational accidents and diseases, especially for developing countries, and which we are delighted to support.[168]

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[167]   I Dunlop, "Safety first on the agenda", *Company Director*, October 1998, pp 29-30.

[168]   *Report on European Study Tour, July 1998*, p 41.

7.8   Recommendations

Recommendation 21:

The Committee recommends that the *Occupational Health and Safety Act* be amended to ensure that Victim Impact Statements are admissible in the sentencing process for offences under the *Occupational Health and Safety Act.* [Refer to *Interim Report* - recommendation 18.]

Recommendation 22:

The Committee recommends that the *Occupational Health and Safety Act* be amended to require the publication by WorkCover NSW of a "State of the Workplace" report, (based upon the model of the "State of the Environment" reports published by the Environment Protection Authority) providing a detailed assessment of occupational health and safety, once every two years.

Recommendation 23:

The Committee recommends that WorkCover NSW provide sponsorship for the establishment of an award to recognise excellence in disclosure of occupational health and safety performance in annual reports.   This sponsorship should initially be offered to Annual Report Awards Australia Inc.

Recommendation 24:

The Committee recommends that, in the implementation of Recommendation 11, concerning the accreditation of OHS management systems, WorkCover NSW give attention to the extent to which OHS management systems require the disclosure of occupational health and safety performance information to shareholders and the community.

Recommendation 25:

The Committee recommends that WorkCover NSW become a collaborating centre in the International Labour Organisation's Collaborating Safety and Health information (CIS) network, as a means of developing relationships and sharing information with occupational health and safety regulators in the Asian region.

Chapter Eight
Putting the Pieces Together

8.1   Other matters raised in the Committee's *Issues Paper*

8.1.1   The first eight questions raised in the Committee's February 1998 *Issues Paper*, upon which the Committee sought submissions, have been addressed in Chapters 5-7 of this report. The Committee's *Issues Paper* posed some further questions:

> 9   Should mine safety be included in the general occupational health and safety framework?

> 10   Miscellaneous issues concerning the legislative framework raised in earlier submissions/evidence:

> 10.1   Should there be any changes made to make it easier for individuals or unions to bring prosecutions for breaches of the *Occupational Health and Safety Act*?

> 10.2   Is the current legislative framework too complex?

> 10.3   Should written OHS policies be mandatory?

> 10.4   Should there be a provision for conscientious objection to the right of entry to a workplace by a union?

8.1.2   The Committee was uncertain when these questions were posed whether any of them would generate much interest. As it transpired, with the exception of the last question, these questions have not generated much interest at all. Therefore, with the exception of the last question, the Committee does not propose to formally deal with any of these questions.[169]

8.1.3   In relation to the final question, the submissions received which commented on this matter were generally opposed to the provision of a conscientious objection to the right of entry to a workplace by a union.[170]

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[169]   To some extent questions 10.2 and 10.3 have been subsumed into earlier parts of the report. Reference is made to the Committee's reiteration of the recommendations in the *Interim Report* for the overhaul of the Act, including plain English drafting. Reference is also made to the recommendations concerning the introduction of a specific requirement for employers to adopt a systematic approach to the management of OHS and the reference to the six-step process, which all but compels the development of a written OHS policy.

[170]   See for example *Submission*, OHS&R Council, 28/7/98, 7.

8.1.4   During the Committee's hearings in August 1998, this matter was discussed with a number of witnesses, including representatives of the Labour Council of NSW and the OHS&R Council. The discussion with representatives of both the Labour Council and the OHS&R Council ended with an acknowledgement that this matter could be the subject of further examination. The discussion with representatives of the OHS&R Council is set out below:

> Reverend the Hon. F. J. NILE: Question No. 10.4 asks whether there should be a provision for conscientious objection to the right of entry to a workplace by a union. I have noted the statement contained in the submission, but I wonder whether council would agree to a qualification along the lines that conscientious objection be granted only by the Minister to a certain workplace on genuine religious grounds, for example to the exclusive Brethren. Such exemption would be granted on the basis that the workplace be inspected annually by a WorkCover inspector to ensure a safe place of work still bound by the Occupational Health and Safety Act.

> Mr HOWELL: That is not the way in which council approached this question. Council was of the view that a religious order has the same responsibility as the rest of the community for the safety of its members or employees. Council did not recognise any good reason to grant exemption on the grounds of conscientious objection. Of course, council approached the question from a different point of view than the religious organisation. Our view was that authorised officers of WorkCover, authorised union officers and members of the Occupational Health and Safety and Rehabilitation Council, as permitted by legislation, should be able to enter a workplace at the request, perhaps, of someone at that workplace or, alternatively, if it is believed that there is good reason to enter the premises. It was our view that there should not be any discrimination against unions. If WorkCover has the ability to enter a workplace then the authorised officers of a union or members of the council should have exactly the same ability to enter the premises. You are proposing that WorkCover should be the ultimate body to go in and make the inspection, for whatever reason. We have not discussed that, but I think that we would probably stand by our recommendation that if it is good enough for everyone else, why not them.

> Reverend the Hon. F. J. NILE: I was looking at it from the point of view of providing a safe workplace. If that is the objective, you could achieve that by what I have proposed. They would be inspected without any complaint or request. It would be a compulsory inspection of the plant or factory every year. You could make it every six months, I do not care how often it occurs.

> Ms KIDZIAK: I think council has always been unanimous in its thought that once you make an exception for one sector or group, you leave it open to other groups

to apply for particular exemptions. We believe that you need to look at things in a fair manner, which means everyone being treated equally.

Reverend the Hon. F. J. NILE: Just to follow up on that. If the company will not let the union representative enter, you will be involved in a court case.

Ms KIDZIAK: That is right.

Reverend the Hon. F. J. NILE: Do you believe it is desirable to have that situation?

Ms KIDZIAK: I personally do not believe that a court case is ever desirable. The issue should be solved long before it gets to a court situation. I believe it is incumbent on the parties to be able to talk and communicate with each other so that either party can go about the business they are trying to do. However, safety is a critical issue, not only at work but outside work as well, and I think it is important enough that we need some guidelines in this State and throughout the country that allow people to be treated equally so far as safety is concerned. That applies to employers and employees. I think it is a very critical issue.

The Hon. J. F. RYAN: Would it be fair to say that the issue is not openness to inspection or the requirements under the Act, it is whether or not they are to comply with what has been at least seen to be fairly controversial provisions of laws which deal with a union representative entering and not a WorkCover representative. These people have a conscientious objection to the issue of the union representative. They are happy to have any other representative. There appears to be a conflict between their human right to a particular form of religious belief, and to the law which happens to have a political decision included in it which states that, generally speaking, union members should be able to go in and inspect places, even those where they do not have representatives.

Ms NOLAN: Only authorised officers can enter.

Mrs HALL: And it is only places where they have potential members or current members. If they did not have members or people in that workplace who could be members of that union, they would have no right to enter the workplace.

Ms BUTREJ: The other aspect is that unions can only enter premises when there are good grounds to suspect there has been a breach. That makes it not so much an issue of the workplace trying to obtain an exemption from compliance with the Occupational Health and Safety Act but an issue of enforcement. The unions have been given the right to enforce the Occupational Health and Safety Act and regulations to a degree. To prevent their entry into the workplace when there is a strong suspicion that there has

been a breach of the Act would deny them that right to enforce the legislation. That would make enforcement of the legislation more difficult in that workplace.

Reverend the Hon. F. J. NILE: The qualification would be that at that point the union would request the WorkCover inspector to inspect the workplace. That would be allowed: there is no question about that. They would be happy to be inspected every day.

Ms NOLAN: There is a problem with that, is there not? WorkCover has a finite number of inspectors to cover the whole of industry in New South Wales. That is one reason why there was agreement for union-authorised officers to have the right of entry and to have the capacity to conduct the inspection. Without that the State would not be able to afford to effectively implement this legislation by way of inspection and prosecution. It seems to me that if you have one group saying, "We will allow union-authorised officers except that if they are actually going to use that authority to prosecute they are going to have to call in WorkCover", it would make WorkCover inspectors the servants of the union. Otherwise you would be giving the exclusive Brethren a disproportionate amount of the State's resources in having the premises inspected, I think you said every three months if necessary.

Reverend the Hon. F. J. NILE: Whatever you think is required.

Ms NOLAN: Do you understand what I am saying? It is my taxes that will pay for that.

Reverend the Hon. F. J. NILE: You could ask them to pay for the inspection.

Ms NOLAN: But, they do not pay taxes.

Reverend the Hon. F. J. NILE: They pay taxes, yes.

Ms NOLAN: Are they not a religious organisation that is exempt?

The Hon. J. F. RYAN: The only purpose of union entry is to ensure that the law is being complied with. If some other method can be designed to ensure that the law is being complied with, would it not be possible for them to exercise their conscientious right of objection to unions?

Ms NOLAN: I do not think that is appropriate for the State to do that. What is the basis of the religious objection? Is it that they do not want a person they consider to be an unbeliever coming on to the premises?

Reverend the Hon. F. J. NILE: No, not an unbeliever. You could have an unbeliever working for an inspector. It is a reluctance to have the union.

Ms NOLAN: What is the problem with the union?

Reverend the Hon. F. J. NILE: It is an attitude to the union.

The Hon P. T. PRIMROSE: I imagine many employers would come to share the same religious concern.

Reverend the Hon. F. J. NILE: It is an attitude to associations. They are happy for the Government to do anything it likes but they do not want any association with any association, and the union is an association. It would not matter what association.

Ms NOLAN: But they are having an association with an officer authorised by the Government to conduct the inspection. Suppose the Government privatised its inspection services and gave it to a company. Will that group then say that it has a religious objection to that company?

Ms KIDZIAK: On behalf of council may I make a comment. Our reaction is as stated in our submission to the Committee. If the Committee would like us to go away and think about this matter further, we will be happy to do that. We may well come up with some options that are the same as stated today, but it may well be that as a tripartite council we will be able to think of some other options that may be appropriate. We will be happy to do that, if you so request.

CHAIRMAN: Thank you for your offer.[171]

8.1.5   The Committee received a further submission from the Christian Fellowship known as Brethren on 11 November 1998. In that submission, reference was made to a number of conditions for a possible conscientious objection to the right of entry provisions, which had been suggested by Rev Nile during the Committee's hearings. The submission expressed acceptance of Rev Nille's suggested conditions, set out below:

- Agree to an annual or as required inspection of their workplace safety by a WorkCover inspector, perhaps at your cost, especially if there is an accident and Workcover claim.

- Agree to establish an OHS committee comprising management and employees responsible to Workcover, not a union.
- Agree to appoint and train an employee as honorary Safety Officer responsible for risk management in each Brethren business, responsible to Workcover, not any union.

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[171]   *Evidence*, 25/8/98, Mr H Howell, Ms D Hall, Ms S Kidziak, Ms T Butrej, Ms S Nolan, pp 51-54.

However, we would prefer to have an exemption tied to the certificate in the *Industrial Relations Act* ss 212(3) and 296(2) rather than a list.[172]

Recommendation 26:

The Committee recommends that the Occupational Health, Safety and Rehabilitation Council consult with members of the Brethren Assembly to develop a suitable mechanism under which provision could be made for a limited conscientious objection to the right of entry to a workplace by authorised officers of a trade union under the *Occupational Health and Safety Act.*

8.2   Creating a vision for better OHS regulation - final lessons from the European experience

8.1.6   The information gleaned on the study tour undertaken by the delegation during July 1998 has been critical in the development of the Committee's views on a number of the issues addressed in this report, and the report on the study tour has been referred to on a number of occasions throughout this report. However, there are a number of other lessons from the study tour, to which the Committee would like to draw attention. These are briefly set out below.

8.1.7   The Committee has carefully noted the description of the briefings the delegation received in Germany, and the documentation provided in those meetings. The Committee made a recommendation in the Interim Report that consideration be given to the development of mechanisms by which workers compensation premiums could be used to provide incentives for employers to undertake OHS preventive measures.   The Committee specifically referred to the South Australia Safety Achiever Bonus Scheme.[173] The Committee referred to the fact that the South Australian scheme was under review. The Committee has also been provided with research which indicates that there are inherent difficulties in seeking to use experience rating in workers compensation premiums and bonus schemes to drive OHS prevention.[174]   The Committee was therefore greatly encouraged by the information which the delegation brought back about financial stability (and low premiums) in the German workers compensation

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[172]   *Submission*, 11/11/98, The Christian Fellowship Known as the Brethren.

[173]   *Interim Report*, Recommendation 10.

[174]   See for example L Carter, A Clayton & J Walsh, *Experience Rating and Occupational Health & Safety*, Coopers & Lybrand, 28/11/96.

system, and the success of the German bonus/malus system (with a bonus/malus of up to 60 %) in driving OHS prevention.

8.1.8   The Committee was struck by the fact that some of the recent OHS reforms introduced by the NSW Government are quite similar to structures or strategies to which the delegation was exposed on the study tour. This is particularly the case in regard to the new model for stakeholder ownership of the workers compensation system and OHS legislation provided for in the *Workplace Injury Management and Workers Compensation Act 1998*, discussed in Chapter Four. These structures reflect models the delegation learnt about in Denmark and the United Kingdom, and to a limited extent reflect the model which the delegation learnt about in Germany. The Committee is therefore of the view, that there is much that those who are too be involved in the new model in NSW can learn from this pre-existing overseas experience.

8.1.9   Furthermore, the Committee has carefully noted the fact that, upon the introduction of such a structure for stakeholder ownership in Denmark, the opportunity was taken by the Government to publish an OHS vision statement and action programme. This action programme provided a snapshot of the state of OHS at the relevant point in time, set out the objectives for OHS over the next ten years (agreed upon by the stakeholders) and clarified the respective roles to be played by all players/stakeholders.[175]

Recommendation 27:

The Committee recommends that the Workers Compensation Advisory Council and the Workers Compensation Premiums Rating Bureau undertake a detailed investigation of the German workers compensation experience rating system and bonus/malus scheme, with a view to identifying the elements of the German system which are able to be applied in NSW.

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[175]   Arbejdstilsynet, *Clean Working Environment 2005* (English translation) 1995, reproduced as Appendix Three.

Recommendation 28:

The Committee recommends that, in order to avoid "reinventing the wheel", the Workers Compensation Advisory Council and Industry Reference Groups establish information sharing networks with the Danish Working Environment Council and Sector Safety Councils, the United Kingdom Health and Safety Commission and industry advisory committees, and the Central Federation of the German Berufsgenossenschaften.

Recommendation 29:

The Committee recommends that the NSW Government prepare and publish, within twelve months, an occupational health and safety vision statement and action programme, along the lines of the Danish *Clean Working Environment 2005.*