



HISTORICAL TRENDS IN
OCCUPATIONAL HEALTH AND SAFETY
IN VICTORIA

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SYNOPSIS

This thesis reviews the history of Occupational Health and Safety legislation in Australia from its conception in attempts to regulate the factory system in the mid-nineteenth century until the passing of the Occupational Health and Safety Act in 1985 in Victoria. This historical and comparative overview evaluates the various attempts by government to improve work conditions so as to reduce the high rates of industries accidents.

The thesis argues that the 1985 legislation marks a turning point in strategies adopted by government to allocate responsibility for industrial accidents. On the one hand, employers are made legally responsible for the conduct of a safe workplace, while on the other, employees are given shared responsibility over the monitoring of working conditions and the reporting of unsafe conditions.

Evidence is presented which suggests that informal work practices serve to perpetuate unsafe working conditions, and that the strategy of shared responsibility does not address these informal practices.

Practices which maintain or increase production rates may be countenanced by both employers and employees, even though this may be at the risk of prosecution and also damaging to workers' health.

The thesis concludes with some proposals for improvements to legislation, focusing particularly on training programmes for workers in occupational health and safety.

INTRODUCTION

For more than one hundred years occupational health and safety issues have been of major significance for workers, unions, employers, governments and at times the community at large in all parts of Australia, and Victoria in particular. The same may be said to some degree about other countries as well.

The aim of this thesis is to address a number of health and safety issues that have always existed in Victorian workplaces. Prior to Federation, unions and workers had shown concern over unsafe working conditions, which at times resulted in industrial action. The subject of an unsafe work environment and industrial action has often been on the agenda between unions and employers, often culminating in safety issues being written into workers' industrial awards.

The Victorian Occupational Health and Safety Act 1985, united the maze of legislation that had existed. The rapid changes which were taking place in the work environment, new technology which was being introduced to industry, and the impetus for unions to create safe working conditions for their members, all resulted in governments being forced to change their focus about

occupational health and safety. The legislation was introduced in an attempt to prevent, or at least decrease the number of injuries and deaths which industry had sustained over the years, and appeared to be the turning point with occupational health and safety representatives, among other vested powers, being given the right to discuss contentious issues directly with management. Also of significant importance were the election of a safety committee and the formation of an inspectorate which had the power to issue Prohibition and Improvement Notices at any time when inspecting a workplace.

Victorian workers today face a plethora of potential hazards to their health, safety and well being than ever before. This is evident by the number of employees interviewed throughout this thesis, and the hazards that they have encountered and had to endure. These hazards are associated with injury and illness in the workplace consisting of a physical and/or a chemical nature, airborne contaminants in the atmosphere, bad work practices, and the effects of organisational and physiological demands placed upon workers through unsafe work practices in completing quotas within an unrealistic time frame.

The Victorian Occupational Health and Safety Act 1985, is the most progressive legislation to date that has been introduced into Australia to protect workers' health and safety. The Victorian Act is examined and evaluated in detail together with the Acts of the States, Territories and Commonwealth in Chapter 6. The Victorian Act functioned under a tripartite Occupational Health and Safety Commission consisting of employer related organisations, unions, and government. This was the consultative mechanism from which all Regulations, and codes of practice, present and future, would be derived. However, since the inception of the Kennett Government in 1992, funding has been drastically cut, which in turn has had dramatic effects upon the training of health and safety representatives. Safety education and hazard prevention seminars have practically been eliminated, while the role of the Commission with its wide range of powers and function, has been transferred to the Department of Business and Employment, leaving Victoria's tripartite body ceasing to exist, and placing health and safety in Victoria back to the 1960s.

The presentation of this thesis is along the following lines. Chapter 1 provides an insight into the evolution of health and safety practices in Victoria, and Melbourne in particular, from pre-Federation onwards.

Workers were subjected to long hours of work in cramped and dirty workplaces with little or no ventilation, and as well to take work home to complete quotas, thus extending their working day well into the night, with no monetary rewards forthcoming from employers.

Chapter 2 examines the scientific theories that had had an effect on the physical working conditions of humans, dating back to pre-Roman times. Industrial psychology was about the re-design of work and selecting the correct person to complete the task in the shortest time possible, resulting in workers suffering psychological and physical ill health, whilst being de-skilled. The issue of industrial democracy is raised in the belief that workers should have some control over their work environment, career structure, and health and safety issues in the workplace.

Chapter 3 addresses management's view of occupational health and safety. Management has control of the working environment, the people involved, and the machinery used in the manufacture of goods. Also examined is the concept of informal work practices where management at times turns a blind eye to unsafe working conditions, thereby not being prepared to take responsibility for occupational health and safety.

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Chapter 4 continues to address the issue of informal work practices, be it by sub-contractors or permanent employees in organisations. The trade union movements views this situation from the point of view that workers have not had sufficient training when using safety equipment, thereby requiring greater supervision when performing certain hazardous tasks. The chapter also draws attention to interviews conducted with health and safety representatives regarding their workplaces. The general belief was that management was not concerned with safety as a priority over production, and that many of the injuries in the workplace were as a result of workers being careless.

Chapter 5 is concerned with the legislation and its historical development in Australia in the 20th century, evolving from the United Kingdom. The legislative mechanism of occupational health and safety is different within the states and territories, and the Commonwealth Government has attempted to not intervene in safety legislative issues that have existed in the states. Australia's occupational health and safety legislation was influenced greatly by the philosophy contained in the Robens Report from Britain. Britain, like Australia, tried to address the problem of industrial injury and death by laying down safety standards and regulations to be adhered

to in the workplace. Victoria eventually introduced the Occupational Health and Safety Act 1985 after the Labor Government gained office. The Victorian Act was established on a tripartite basis with government, employers and unions all participating on a consultative basis regarding health and safety. Following a change of government during the latter part of 1992, the Liberal Party has now decided to abolish and change parts of the legislation.

Chapter 6 concludes by examining some training programmes together with the more recent changes that have been introduced in the Victorian legislation. Trade union trainers in health and safety firmly believe that industrial injuries had been reduced as a result of the 1985 legislation and the resultant consultative methods between employers and representatives. However, the belief is that this trend could easily be reversed as a result of the Kennett Government's weakening of the Act.

CHAPTER 1

INTRODUCTION TO OCCUPATIONAL HEALTH AND SAFETY

Argument over the deterrent value of punitive enforcement entails not only a consideration of the size of financial penalties and the frequency with which they are imposed, but also the question of whether managers responsible for breaches or negligence resulting in injury or death should be tried, and if guilty, gaoled.

Quinlan, M., and Bohle, P:
Managing Occupational
Health and Safety in
Australia, South Melbourne,
Macmillan, 1991, p.238.

Australia, and Victoria in particular, has a set of regulations which protect the worker from injury within the workplace. This protection is enforced by government and inspectorates, but there has been a growing concern over whether such enforcement has been successful. There appears to be a decided reluctance to prosecute employers who openly breach legislative requirements.

Quinlan and Bohle refer to the early British Factory Acts in explaining the failure of the inspectorate to adopt prosecutorial measures. The passing of such British Acts in 1833 and 1844 marked the commencement of a large number of prosecutions for breaches of the Acts, however magistrates refused to convict factory managers for certain offences, mitigated the penalties for others, and treated multiple breaches as a single contravention. By the 1860s, prosecution, the workers' weapon, had almost entirely been discarded as the inspectorate, encountering hostility in the courts was forced to place increasing emphasis on other forms of enforcement.(1) This development was primarily a response to a number of evolutionary factors such as the limited number of inspectors, limited powers, increasing workloads, legal problems encountered, and the refusal of courts to

1. Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, South Melbourne, Macmillan, 1991, pp.230-1

inflict harsh penalties on employers who violated statutory requirements.(2)

The above leads us to a significant area of public debate on whether inspectors are driven by organisational constraints towards the adoption of low cost methods of enforcement of occupational health and safety regulations, based on persuasion and education, rather than on prosecution, although it could be argued by management that persuasion is a more effective form of enforcement. The impediments on prosecutions, such as under-resourcing, have been clearly identified in numerous studies of inspectoral activity, according to Quinlan and Bohle, and recent examples in Australia are no exception.(3)

Grabosky and Braithwaite believe a greater emphasis should be placed on punitive forms of enforcement, but that punishment and persuasion should not be seen as complete alternatives since neither is likely to work alone. Some form of balance between the two is needed, although they argue more strongly for punishment.(4)

2. ibid, p.231.
 See also Bartrip, P., and Fenn, P.T.,
 "The Conventionalisation of Factory Crime -
 A Reassessment", in Journal of Law and Society
 10(2), 1983, pp.201-22.

3. ibid, p.231.

4. Grabosky, P., and Braithwaite, J., Of Manners
 Gentle: Enforcement Strategies of Australian
 Business Regulatory Agencies, Melbourne,
 Oxford University Press, 1986, pp.225-31.

Debates over the deterrent value of punitive enforcement contain two major issues, the first being the size of the financial penalties and the frequency with which they are imposed, and secondly the question of whether managers should be responsible for breaches and negligence that result in injury or death, and if convicted should they be gaoled.

The option of charging management with manslaughter for the death of a worker has not been introduced in Australia, although according to Blanchfield and Prevost, both union officials, the laying of criminal charges in such circumstances should be mandatory.(5) Carson and Johnstone pursue the point that they believe that the situation of deaths arising from employer negligence should be dealt with from within the framework of the Occupational Health and Safety Act. In their opinion a general offence of death caused by regulatory violation is not sufficient to meet the requirements of recriminalisation of serious occupational health and safety offences. They would prefer to see an amendment of the 1985 legislation to include the offence of causing death through violation of the

5. Interview with E. Blanchfield, Union Official, Electrical Trades Union, and R. Prevost, ex Head Trainer, Occupational Health and Safety Unit, Trades Hall Council and now Safety Officer, Finance Sector Union, October 1992.

Act itself, or of its attendant Regulations.(6)
 In so doing, they believe that greater justice may be obtained without presenting the risks involved in taking these issues out into some other and purportedly more criminal arena.(7)

Koletsis, Prevost and Blanchfield, occupational health and safety union officials, disagree with Carson and Johnstone, holding the belief that death through occupational health and safety offences should be regarded as criminal offences under the Crimes Act, and that charges of manslaughter should be pursued.(8)

Over the years most workplace deaths have attracted little public attention, with the exception being the Sims Metal explosion which occurred in September 1986 at Brooklyn, Victoria, when four workers were killed and a number of others injured. The company was fined \$15.000.(9) In 1983 at the Kellogs plant in Sydney, an

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6. Carson, W.G., and Johnstone, R., "The Dupes of Hazard: Occupational Health and Safety and the Victorian Sanctions Debate", Appendix Two, in Carson, W.G., Victorian Occupational Health and Safety - An Assessment of the Law in Transition, LaTrobe/Melbourne Occupational Health and Safety Project, Melbourne, 1990.
 7. *ibid.*
 8. Interview with union officials N. Koletsis, Amalgamated Metal Workers Union, R Prevost, Finance Sector Union and E. Blanchfield, Electrical Trades Union, October 1992.
 9. The Australian, 14 March, 1989.

apprentice working inside a pressure cooker was enveloped in high pressure steam for ninety seconds. He staggered out in agony, his skin peeling, and subsequently died from the effects of burns nine hours later. The account given by the attendant plastic surgeon was that the injuries sustained were worse than any of the napalm burns he had seen during the Vietnam War.(10) The coroner found Kellogs guilty, and concluded that insufficient care and attention was given by the employer to implementation of a system to enable complete isolation of a cooker for internal access; or to ensure safe working procedures, including training programmes. Even though Kellogs pleaded guilty to the charges brought under the then Factories Shops and Industries Act, the magistrate fined the company only \$950, and justified his failure to impose heavier penalties by pointing to the company's good record.(11)

Koletsis and Prevost believe attitudinal changes are required Australia-wide with regard to deaths in the workplace, similar to the situation in the United States where union officials and lawyers involved in health and safety are launching criminal prosecutions against workplace managers. In Quinlan and Bohle's opinion the overall incidence of occupational related

10. Australian Society, Vol.7, No.11, November 1988.

11. *ibid.*

deaths is not accurately recorded, nor is it the subject of any continuing debate or political action.(12)

This picture stands in sharp contrast to that of thirteen magistrates interviewed by Carson regarding their approach to occupational health and safety legislation and the issues of liability and sentencing under that legislation.(13) No magistrate was prepared to state unequivocally that those persons convicted under the legislation were criminals. According to Carson , as a typical response, one magistrate scoffed at the notion that under the occupational health and safety legislation offenders could be classified as criminals - he saw the situation as merely a quasi jurisdiction, similar to road traffic offences. Magistrates tended to think that employers convicted under the legislation should not be heavily penalised, particularly if every possible safety precaution was seen to be taken, and the employee of his own volition was seen to get himself into a certain set of circumstances.(14) Some viewed occupational health and safety offences as social offences, not criminal, while another saw employers as "people who were negligent

12. Quinlan, M., and Bohle, P., op cit., p.2.

13. Carson, W.G., Victorian Occupational Health and Safety: An Assessment of Law in Transition, LaTrobe, Melbourne, Occupational Health and Safety Project, 1990.

14. *ibid.*

of their responsibilities rather than people who were indulging in criminal type consideration". Carson concluded that most magistrates were not predisposed to consider occupational health and safety offences in the light of normal criminal offences. Also magistrates generally considered employers to be highly responsible members of society, and that there would only be a small number of prosecutions for them to deal with. Further, some magistrates were very quick to reach the conclusion that the actions of injured workers contributed to their accidents.(15)

According to Carson and Johnstone, the inspectorate's main means of dealing with breaches of the occupational health and safety provisions prior to 1986 was to impose requirements, usually orally, to remedy contraventions. Inspectors would eventually follow up on these requirements.(16)

The Occupational Health and Safety Act 1985 saw dramatic changes take place in Victoria. Carson and Johnstone said the most crucial and contentious point was the decision to give elected health and safety representatives a wide range of powers, including inspecting the workplace, accessing information held

15. *ibid.*

16. Carson, W.G., and Johnstone, R., op. cit.

by employers about potential or actual workplace hazards, and accompanying inspectors who visited the workplace.(17) Inspectors were empowered under the Act to issue prohibition notices and provisional improvement notices, as well as being able to perform adjudicative roles, particularly in relation to disputes over provisional improvement notices and the cessation of work. The Victorian Occupational Health and Safety Act 1985, and the role of inspectors and health and safety representatives will be examined in detail in Chapter 5.

Most laws relating to occupational health and safety in Western countries put the onus of responsibility on management, maintains Harrington.(18) Even though the worker may be the cause of their own demise or disease, such attribution is not often invoked as the sole cause. Claims for negligence are matters for common law and employers' liability for ill health at work is often expressed as judge-made law. In principle, says Harrington, if the defendant, who in such cases means the employer, is under a duty of care and the type of injury or illness is foreseeable, then the defendant is liable. In the case of worker liability, the opposite

17. *ibid.*

18. Harrington, J.M., "But who is Responsible", in The Journal of Occupational Health and Safety - Australia and New Zealand, ANZSOM Meeting, 1987, p.45-6.

opposite set of circumstances is needed. Anyhow, it is management at the workplace who stands responsible for industrial injury.(19)

Occupational health and safety in Australia, and particularly Victoria, has become increasingly important since 1985. The areas of such importance are legislation, politics, business management and trade union policy. As a result of this legislation, worker participation has been increased in improving workplace safety.(20) Workers have the opportunity to be involved in decisions that were predominantly management's prerogative, such as poor working conditions, hazards and the prevention of accidents within their working environment.

This has not always been the case - the working conditions in Victoria, particularly Melbourne, appeared to be worse than elsewhere in Australia. Chapter 2 explores the health and safety conditions of Victorian workers during the 19th century, prior to Federation.

19. *ibid*, p.46.

20. Biggins, D.R., and Farr, R.H., "Occupational Health and Democratisation of Work", in The Journal of Occupational Health and Safety - Australia and New Zealand, 4(3), 1988, p.234.

CHAPTER 2

EVOLUTION OF HEALTH AND SAFETY PRACTICES IN VICTORIA

"...occupational health and safety in Australia, despite recent developments at State and Federal Government levels, in industry and organised labour and in the professions, is still in an embryo state."

Australian Medical
Association:
"Occupational Health and
Safety", September 1986.

This chapter examines the evolution of health and safety practices in the Victorian workplace from pre-Federation onwards. In the latter part of the 19th century Australia's industrial revolution gained momentum with the introduction of steam driven machinery, and the same time marked the birth of unions and the Melbourne Trades Hall Council. Those who managed factories, unions, and factory legislation which enforced working conditions, all played an integral part in Australia's, and particularly Victoria's, early industrial development. This tripartite relationship was never a very harmonious one, and indeed what was imposed on workers by employers during the latter part of the century resulted in a tremendous social struggle over working conditions.

Regulation of Work Practices

When Australian trade unions started to emerge, their founders had little conception of any pattern required to bind them together for the future. Their problems were instant, and their local organisation was their strength. As industry and unionism developed, it quickly became evident that there was a need to form some central organisation within each colony to assist in union disputes, and also to allow other unions affected to be consulted. This eventually led to the formation of the Trade and Labour Councils which were founded in capital cities of the colonies from the 1850s onwards.(1)

1. Evans, W.P., "The Australian Council of Trade Unions" in P.W.D. Mathews and G.W. Ford (ed.) Australian Trade Unions, Melbourne, Angus and Robertson, 1968, p.103.

The actual beginning of Australian unionism, according to R.A. Gollan, dates back to the formation of the small trade societies in Sydney in the 1830s and 1840s by Englishmen who had emigrated to Australia.(2) However, for most practical purposes we tend to think of Australian trade unionism as evolving from the 1850s. In Sydney the Amalgamated Society of Engineers was formed in 1852; in 1853 the Stonemasons was formed, and the Australian Society of Progressive Carpenters and Joiners dated from 1854. In Melbourne too, unions were actively formed during the 1850s, such as the Operative Stonemasons' Society, and building trades unions. Printers and typographers organised unions in Melbourne, Sydney and Ballarat during the fifties(3), and in the case of white collar employees, union organisation and participation dated from approximately the 1880s, and centred its activities mainly on State school teachers and public servants.(4) The Australian economy boomed during the 1880s. However, there was a depression ten years later. Many workers lost jobs, employment slumped and small businesses collapsed, and at the same time employers tried desperately to reduce wages and weaken

2. Gollan, R.A., "The Historical Perspective", in P.W.D. Mathews and G.W. Ford (ed.) Australian Trade Unions, Melbourne, Angus and Robertson, 1968, p.14.

3. *ibid*, pp.14-15.

4. Martin, R.R., Trade Unions in Australia (2nd ed.), Victoria, Penguin, 1980, p.1.

the union structure. The end result was numerous bitter strikes between unionists and employers.(5)

As well as negotiating the terms of employment, unions from 1885 to 1900 advocated and adopted various policies of political significance. They sought legislation that would lay the foundation for minimum conditions of health and safety in the workplaces.(6)

All colonies, except Tasmania, followed the path of regulating working conditions. Adequate ventilation, sanitation and protective screening of dangerous machinery became compulsory. Conditions of apprenticeship were controlled, the employment of children prohibited, and the hours of work for women and juveniles under the Age of sixteen was restricted. Maximum working hours for shop assistants were also specified, and radical provisions were brought in, such as a half-day holiday in the six-day working week. In 1896 the Victorian Factories and Shops Act established a Wages Board empowered to fix minimum wages and prevent sweat shops, and hence pass on the benefits of tariff protection to the employees thus becoming the first system of wage regulation through industrial legislation in Australia. Twenty-two industries came under the legislation by 1900, and South Australia was also

5. Laidlaw, R.M., The Land They Found (2nd ed.), Victoria, Nelson, 1980, p.199.

6. Gollan, R.A., op. cit., p.20.

beginning to adopt this model.(7) However, prior to 1896 and the establishment of a Wages Board, the living and working conditions of the greater majority of the lower classes were in fact far inferior to the picture presented by shop and factory owners, mine managers and those who wished to believe that the existing order of society was the best of all possible worlds.(8)

Early Examples of Occupational Disease

Michael Cannon writes that one of the basic problems in Australian cities, as was the case in other areas which were rapidly industrialising and populating, was that the working class progressively lost space to produce a proportion of their own food supplies through ownership of domestic animals, and the growing of vegetables. Advances in urban sanitation, which were supposedly for the benefit of all classes, operated against the lower classes by diminishing their diet and taking away the partial independence which the ownership of poultry, cows and pigs gave. The factory worker took on a modern shape as being the sole expert operative of a specialist machine

7. de Garis, B.K., "1890-1900", in F.K. Crowley (ed.) A New History of Australia, Melbourne, Nelson, 1974, p.241.

The Victorian Government was the first colony to implement this industrial legislation in the form of the Factories and Shops Act, which provided for a Wages Board in the industries of clothing, furniture, food and bread manufacturing.

8. Cannon, M., Life in the Cities, Australia in the Victorian Age: 3, Melbourne, Nelson, 1975, p.264.

and a consumer of output of other specialists. This made the factory worker, according to Cannon, extremely vulnerable to fluctuating economic conditions, and when hard times arrived, they had no other resources to fall back on.(9)

The conditions of the working class appeared to be worse in Melbourne than in other colonies, mainly due to the fact that industrial areas were being more rigorously segregated, there was a greater working class populace, and the climatic conditions were more unbearable than elsewhere in Australia. During the 1870s, Dr. J. E. Neild angrily wrote -

I know from experience something of the chronic domestic dirt which prevails among the lower classes in the manufacturing towns of England, but nothing I have ever witnessed in the West Riding of Yorkshire and in South Lancashire, equalled in repulsiveness of what I have found in Melbourne.(10)

Neild further mentioned that the conditions in a great number of cottages were so bad, it was impossible to put them into print. In a typical cottage where a bootmaker had existed from birth, there was neither bed, table nor chairs. The body of the bootmaker, reports Neild, was lying in a corner, barely covered by a few ragged garments. There was not even a pretence of bed clothes, even of the roughest kind, and the utter filth

9. *ibid*, pp.264-5.

10. Neild, J.E., Dirt and Disease, Melbourne, 1872, cited in M. Cannon, op. cit., p.266.

of the place was beyond any description. There were no signs of any cleanliness, it was literally not fit for a pig to live in, and the body of the man who had lived his whole life in it was dirtier than that of many pigs.(11)

Early Factory Legislation

Among the many ideologies and traditions exported to Australian shores from Britain was the concept that the lower classes should be subservient and grateful to be provided with some sustenance by the upper classes and the activities of capitalism - so grateful that working conditions should not play any role or concern in their lives. This appears to be contrary to the ideology that Australia was a working man's paradise, as the economy was on the verge of a thirty year expansion, in which, despite periods when unemployment was prevalent, there was still an overall shortage of labour. So, why pay higher wages than the market forces dictated? Why waste money on modern factories? When Australia's own industrial revolution emerged and began to gather momentum during the 1870s, factories in most instances were described by investigators as mere sheds.(12)

Jacob Samuel, Slipper Manufacturer, of Faraday Street, Carlton, operated a factory which was found to

11. *ibid*, p.266.

12. Cannon, M., op. cit., p.267.

be too small by the Committee which presented papers to Parliament for the Final Report on the Royal Commission on Employees in Shops. The inspector found the following:-

The front room or shop was very small and was found to have very small dimensions and a number of hands were found working in a back room, where owing to defective construction, it was necessary to keep the gas lighting on during the greater part of the day. Another batch of hands was found at work in an upstairs room which was also very badly lighted and ill-ventilated.(13)

The inspector noted that twelve men, three women, and six apprentices who were indentured for a period of six years, worked at Lowenthal's shop for the daily period from 8 a.m. to 6 p.m. with half an hour for lunch, and all employees were required to work half a day on Saturdays. Further, it was reported that "piece work was given whenever possible" as the more work the employee did either at work or at home the more increase in salary they would receive. Sweat work at home was encouraged, and was given out to the apprentices who soon became known as "sweaters".(14) Most factories were found to have too little ventilation, accommodation and space, and only one toilet, or in some cases no toilet, where

13. Victoria, Royal Commission on Employees in Shops, Melbourne, 1882-4.

14. *ibid.*
Sweating was the name given to work done for extremely low wages.

workers had to relieve themselves down the road at a public house, or whatever they could find available at the time of necessity. One inspector's report even stated "ventilation holes were blocked up, and workers obtained their warmth by breathing in each other's exhalations".(15) As for safety issues, the inspector reported that "unless the door is open you could not work with safety".

As a result of complaints received, H. R. Evans, the City Inspector, visited the premises of Edward Cornell, Draper of Madeline Street, Carlton, reporting that the business of the tailoring department was conducted in a small room that was immediately adjoining the street, "so constructed" said Evans "that during the summer, the heat must have been almost unbearable". Five young women were found to be employed there.(16) In evidence to the Commission, Edward Cornell stated quite proudly that some of his employees "only started work at 7 a.m. and finished at 9 p.m.", and that his shop closed on Saturday night at 10 p.m. In Cornell's opinion to the Commission, shopkeepers could not be induced to co-operate without an Act of Parliament, and that "if many shops did close earlier they would sustain a loss". He further added, regarding his drapery business -

15. *ibid.*

16. *ibid.*

The shopman and woman are better off now than they were formerly, and I think that if they were allowed to go on as they are going matters would improve..... We do everything to make them comfortable, and the young ladies are accommodated with seats when not engaged at work.(17)

Similar working conditions existed in Sydney, as many factories were located in underground holes, particularly in the printing and baking trades, and in these premises inspectors stated that the dampness of the walls and absence of ventilation was physically dangerous to employees. However, if ventilating fans had been suggested to proprietors by an inspector, such a request would have been viewed as somewhat capricious. Other factories were built with walls and roof entirely of corrugated iron. In 1898, one such factory in Sydney employed large numbers of women who worked and sweated in the most stifling conditions of 100 degrees Fahrenheit, when the outside temperature was 88 degrees. Long narrow work rooms were extremely difficult to ventilate when located on the first and second floors of emporiums and soft goods warehouses. "The heat of such rooms, when night work is going on and all the gas jets are alight is intense", reported one inspector.(18)

17. *ibid.*

18. First Annual Report on Working of Factories and Shops Act 1890, N.S.W., Vol.3., Part 2, and Victorian Shops Commission, 1883. Also cited in M. Cannon, op.cit., pp.267-8.

The devastating depression of the 1890s prompted the Victorian Government to again amend its factories legislation. The passing of the Factories and Shops Act 1896 owed much to the activities of the Anti-Sweating League (19), which together with the strong support of The Age and a number of politicians, kept up an unrelenting campaign for the eradication of sweating in the clothing and footwear trades, which were the backbone of the city of Melbourne and some of her neighbouring suburbs such as Richmond, Collingwood, Carlton, and North Melbourne.(20) The Age newspaper played a significant role in the elimination of sweating, as did the Progressive Political League, formed through the Trades Hall Council and similar organisations, though it was extra-parliamentary pressure from these bodies that had a great impact on parliament.(21)

Prior to the Factories and Shops Act 1886 Victoria had passed several other laws which were defective and at times virtually inoperable. As early as 1873 Victorian law prohibited any women or girl from working more than eight hours a day. In 1885 an Act was invoked to attack the abuses of sweating, which was revealed in the 1884

19. Gunningham, N., Safeguarding the Worker, Sydney, Law Book Co., 1984, p.90.

20. McCalman, J., Struggletown - Public and Private Life in Richmond 1900-1965, Melbourne University Press, 1984, p.30.

21. Gunningham, N., op. cit., pp.90-91.

Royal Commission on Employees in Shops.(22) The Royal Commission found that not only was it necessary to regulate the factories and workshops of the colony, but as well the abuses that had begun to demoralise the youth of the colony, leading to larrikinism which was gradually dragging the name of the city into degradation and contempt.(23) The abovementioned Act was not completely successful in that as it was confined to the larger factories, it consequently did not unearth the tiny backyard factories and workrooms which were in a much worse condition.(24) Many employees worked an eight-hour day, while others worked much longer - as much as sixteen or eighteen hours. Rates of pay were fixed for piecework, while much of the manufacture was carried on as outwork by sweated labour, where the rates paid were only a mere subsistence.(25)

The following article from The Age newspaper describes the manner in which the "sweating evil" undermined the wages and working conditions of the late 1800s.

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- 22. Final Report of the Royal Commission on Employees in Shops, Vic., P.P. 1884, Vol.3.
 - 23. Appendix to Final Report of the Royal Commission on Employees in Shops, Vic., P.P. 1884, Vol.
 - 25. Gollan, R.A, "Nationalism, the Labour Movement and the Commonwealth, 1800-1900", in G. Greenwood (ed.) Australia a Social and Political History, Sydney, Angus and Robertson, 1955, p.175.

Seldom has the Melbourne Town Hall presented such a sea of faces as that seen last evening on the occasion of a public meeting convened by the National Anti-Sweating League..... The chair was taken by Professor Gosman, president of the league, and with him on the platform were the council of that body, together with a number of prominent representatives of the industrial classes...

Mr. S. Mauger, Secretary of the League, said that... he had been besieged with hideous tales of the terrible effect of the sweating evil in Melbourne... The representatives of the butchers pointed out that there were men within an easy distance of that hall who worked 90 hours a week for 15s. to 25s. on which they had to keep their families. The tramway employees urged that this great meeting should not close without raising its voice on their behalf. (Cheers.) Their case was before the league, which held it was a disgrace that men had to work 13 days without a single day's intermission, and it was determined to agitate until every public, or semi-public, servant secured one day in every seven for rest and recreation. (Applause.) Outdoor work was admitted to be the crux of this important question, and he was able to prove that unless this outdoor work was properly restricted it would be impossible to suppress the sweating evil. In a large warehouse in Melbourne 10d. a pair was paid for making men's trousers by women who assured the league they were unable to earn more than 15s. a week. In another factory the same kind of trousers were made for a warehouse for 5d. or 7d. a pair. (Shame.) The women who made them had to find their own thread, sewing machines, provide their own motive power, and pay their fares to and from the factory.....

Taking the three worst sweated trades in the metropolitan area, viz. the boot, clothing and dressmaking trades, he found that there were 5893 more persons engaged outside factories than inside. How was it possible to suppress sweating with this large army of outside workers absolutely without restriction unless there was some means of tracing where the work was done, who it was being done for, and what were the prices paid for it?... If the sanctity of the home, and the womanhood of the colony were to be preserved, outside work must be restricted.(26)

Characteristic abuses of the apprenticeship system were also found to be present. Children were employed as apprentices on very low wages or at times nothing, performed some simple process, and were usually dismissed when no longer required by their master. The Act of 1885 was ineffective, as it did not cater for the factories employing less than six hands, which more often than not were the worst places where abuses occurred.(27) The Act of 1896 varied in detail from the other colonies, but generally it overcame the weaknesses of earlier Victorian Acts, especially in the areas of sweating and excessive hours of labour, and also ensured adequate sanitation, cleanliness and ventilation. A further objective of the Act was to work towards early closing of shops, with the determination of wages, and it sought to decrease unfair competition from Chinese labour. As far as health and safety was concerned, it had a two-fold purpose. First, the categories of factory to which the legislation applied were expanded in that all factories were required to register with the appropriate government department. Secondly, the Act empowered inspectors to prosecute when they found factories or workshops in an insanitary condition and dangerous machinery not fenced. Children under thirteen years were prohibited from working in factories, and neither girls nor boys under the age of sixteen years were permitted to be employed for

27. Gollan, R.A., op. cit., p.176.

more than two hours per day, or after the time of nine in the evening.(28)

Indentured apprentices and improvers suffered considerable restrictions, in that they were paid low wages, and employers would keep such wages low so long as they were permitted by the legislature to exist. They took work home and if they did not, they would not be able to obtain a decent livelihood. If work was not taken home by apprentices, it was usually given out to sweaters, who would make the article up as cheaply as possible.(29) Apprentice dressmakers, who paid to be taught, often ended up as merely unpaid labourers. In other trades, the absence of apprenticeships for women was more usual.

However, indentures for apprentices in Great Britain and Ireland were similar to those of the colonies of Australia.(30) When indentured, an apprentice was to serve the master for five years, to keep the secrets of

28. Gunningham, N., op. cit., .70.

29. Final Report of the Sub-Committee appointed by the Trades Hall Council to Inquire into and Report upon the operation of the Factories and Workshops Act in Victoria, in the Final Report of the Royal Commission on Employees in Shops, Victoria, P.. 1884, Vol.3.

30. See Appendix 1.
Appendix 1 is the Indenture of John Greenwood Dickerson to Robert Dowley Taylor, Tailor, 1st March, 1829.

the craft to themselves, obey all lawful commands of the master, and not waste, lend, fornicate or contract matrimony in the term of apprenticeship. Further, the said apprentice was not to haunt taverns, inns or alchouses, and not play cards, dice or tables (gambling). Those apprentices who were live-in with the master, were often overworked and exploited, while other apprentices have their labour in kind, to learn the trade. Apprentice wages ranged from one shilling per week for the first and second year, to two shillings per week for the third year, three shillings per week for the fourth year, and four shillings per week for the fifth and remaining year, if the apprenticeship was over a six year period. Apprentices skilled to trades were more likely to suffer bad and dangerous working conditions than those who were unskilled in the large modern factories of the late 1800s and early 1900s. The smaller factories and firms were more notorious for having old and dangerous machinery, appalling toilet facilities, and scant protection against heat and cold.(31)

The children of families that were just above desperate financial need, often had the best chance of being apprenticed to a trade or of entering one of the government offices, whereas the dilemma facing the working class school leavers and their families was

31. McCalman, J., op. cit., p.125.

whether to chase the quick money as factory juniors or unskilled labour, or to forego a drop in financial earnings to become an apprentice, which in turn left the family income decreasing.(32)

Every specialised trade had its own brand of danger for its workers. Dr. J. Beaney mentions the "watchmaker's necrosis, or a disease of the bone by reason of phosphorus". There was also "painter's colic", "the miner's lung", "the grocer's itch", "the knife-grinder's asthma", and the list could go on. Beaney believed that long hours of application and overwork would intensify the occupational danger.(33) Lead poisoning was common and also incurable in the Japanese style of varnishing, where successive layers of varnish were mixed with white lead and applied to heated saucepans and stoves.(34) A Sydney factory inspector said he witnessed "a female operative fall down in a dead faint" through the inhalation of naphtha fumes.(35) (Naphtha and rubber solution was a waterproofing agent in the clothing trade.)

32. *ibid*, pp.121-5.

33. Victoria, Royal Commission on Employees in Shops, op. cit.

34. *ibid*.

35. N.S.W. First Annual Report on Working of the Factories and Shops Act, Sydney, 1898.
Cited in Cannon, M. op. cit., p.269.

The onslaught of steam driven machinery meant to most employers increased production and high profits. Though this new powered machinery was directly responsible for a large number of industrial injuries in many trades, employers were prepared to fight tooth and nail so as not to spend money on machine guarding, on the grounds that it would be an extra cost and would lower production. Cannon notes that during the 1860s and 1870s the miserable parsimony of mining companies, which continued to use defective steam boilers and ropes, caused numerous fatal accidents.(36)

The Melbourne Trades Hall Council claimed in a Report in 1883, that "a boy, eleven years of age, nearly had a limb torn off through his leg slipping into the pit of a large grindstone, at which he was working". The careless and almost criminal recklessness that employers exposed their workers to was outstanding. Unqualified and incompetent people were placed in charge of steam boilers, and evidence has shown that "numbers of boys are employed in many factories under the age of twelve years, and these boys are often put to work at dangerous machines".(37)

At this point it is worthwhile noting that the occurrence of accidents such as those mentioned above

36. Cannon, M., op. cit., p.270.

37. Factories and Workshops Act in Victoria, op cit.

have not been confined to the dim dark past. In 1986 a fourteen year old boy had his right hand crushed in a meat mincer which was not guarded, at a Dandenong butcher's shop. The Department of Labour inspectors reported to the Minister that the boy was asked by his employer to clean the machine, and as a result his arm was caught in the mincing machine for more than an hour. All fingers of the boy's right hand were severed.(38)

Many families could not resist the lure of factory wages, especially when in dire need of food, clothing and keeping a roof over their heads. It was common for young girls to scrub wooden floors, as was the case at Bryant and May, as they had "to get money somewhere" - the grand sum of 12s.6d. per week.(39) McCalman makes an interesting point in saying that the tragedy facing the juvenile worker of the time was that the system missed no opportunity to exploit their youthfulness, timidity and inexperience in life. A prime example of this exploitation of youth was to have girls and young women employed in the handling of white phosphorus, a substance which if swallowed in chemical form, resulted in death.(40) There was always the ever present hazard of phosphorus igniting, which would result in serious

38. "Mincer Guard not bolted down says Inspector" in The Sun, 13 May, 1986.

39. *ibid*, p.122.

40. *ibid*, p.32.

burns, and the further worry of "phossy jaw" which resulted in gangrene of the jaw bone, due to inhalation of phosphorus fumes. Many large factories had the habit of hiding the twenty-one year olds in the toilets, or anywhere convenient, when factory inspectors and union organisers visited, in order to prevent younger employees speaking up about working condition and piecework.

Studies carried out in 1925 by the Australian Commonwealth Government which resulted in a Royal Commission on Health, stated that adolescent girls working in factories were partially susceptible to gynaecological ailments and problems associated with childbirth because of the heavy work they did. It further claimed that they were generally so debilitated by the time of marriage that trouble-free pregnancies were rare.(41)

In 1927 the Victorian Government mounted an investigation into the health of working women employed at H.V. McKay Ltd. of Sunshine, a medium sized industrial manufacturing workplace, in relation to dangerous employment. The investigation sought to establish whether the work undertaken by such women was injurious

41. "Health and Safety Bulletin", No.41, Editor:
John Mathews, ACTU/VTHC Occupational Health and
Safety Unit, September 1984.

to their health and safety, and if there was any other sufficient reason, apart from the effect of the work done on the health of workers, why females should not be employed in such industries.(42) A further survey regarding women in dangerous workplaces in Victorian industry was conducted in 1928 by the Commonwealth Department of Health.(43) Personal interviews were conducted, working conditions examined, and some factors noted such as the repetitive and monotonous character of the work, the extremities of heat and cold, high noise level, and lack of proper ventilation with airborne contaminants of the like of dust and chemicals.(44) The stimulus behind the above survey was not only the health of women workers in Victorian industry. Dr. Marion Ireland saw women as "the actual or potential mothers of the next generation" and the government therefore was to show concern "to protect and safeguard their unique contribution to the State".(45)

42. *ibid.*

43. Working Women's Centre Discussion Paper, 1976
Occupational Health - Occupational Health
Hazards for Pregnant Women, Discussion
Paper No.14.

44. Hargreaves, K., Women at Work, Sydney, Penguin,
1982.
(See also "Health and Safety Bulletin",
September 1984, No.41.)

45. Ireland, M., A Survey of Women in Industry,
Victoria, 1928. Division of Industrial
Hygiene, Commonwealth Department of Health.

The Australian Factory Legislation was modelled on the 19th century British Factory Acts. Why was this the case? Gunningham provides two answers. First, it was easier to establish legislation which already existed and thought necessary, as was the case in Britain, rather than developing original legislation designed specifically for Australian working conditions. Secondly, many problems encountered in both countries were very similar, hence a mutual solution for resolving industrial problems.(46) When Australia became more industrialised, so followed many of the problems inherent in the British system. In attempting to rectify these problems such as the high level of industrial accidents and the amelioration of poor working conditions, most of the Factory legislation passed by the colonies was in the latter years of the 19th century. This legislation, observes Gunningham, was closely modelled on the British Factory Acts. For example, forty-one of the sixty sections of the first Victorian Act were taken directly from the British legislation.(47) Since that time, a number of new Acts have been introduced, both federally and in Victoria, but the 20th century changes have been in detail rather than principle, with no great fundamental changes in the pattern and scope of the

46. Gunningham, N., op. cit., pp.70-71.

47. Gunningham, N., "Workplace Safety and the Law" in B. Creighton and N. Gunningham (eds.) The Industrial Relations of Occupational Health and Safety, Sydney, Croom Helm, 1985, pp.22-3.

legislation. Gunningham points out that the underlying structure and philosophy upon which the legislation was originally based remained the same, firmly entrenched in the 19th century. As an example, Section 27(1) of the New South Wales Factories Shops and Industries Act 1962 bears a striking similarity to Section 21 of the Factories Act 1844 of the United Kingdom.(48)

The British Factory and Workshop Act 1878 prohibited the employment of children in factories, and regulated to forty-eight a week the number of hours children under sixteen years of age and women were permitted to work. Medical and school certificates for young persons between the ages of thirteen and fifteen were a pre-requisite for employment. There were also provisions ensuring airspace, cleanliness and sanitation, and for those in charge of machinery or boilers to hold certificates of competency. Also of major importance were provisions providing fencing of certain machinery, restrictions on cleaning of moving machinery, and above all power granted to inspectors to ensure that the Act was correctly administered. Eighty years after the British Act came into force, Victoria followed suite basing its labour and industry framework and its industrial safety health and welfare policy on that very 1878 British Act. Gunningham states the following with regard to Victorian Acts following British protocol:-

48. *ibid*, p.23.

The Act formed the basic framework for subsequent legislation and many of its provisions can still be found in the Labour and Industry Act 1958 (Vic.) and the Industrial Safety and Welfare Act 1981 (Vic.).(49)

To the present time over one hundred years has elapsed since the first piece of legislation was drafted to protect health and safety of workers in Australia. Legislation in all Australian states and territories has been influenced not only by the British Act but the Robins Report, which will be discussed at length in a later chapter, but in fact the legislative packages differ significantly throughout the various states and territories. Victoria appears to have the most progressive legislation of all states, a point which will also be examined in major detail at a later stage.

It can be seen from the above that the reasons for the existence of unsafe workplaces and practices are many and varied, and yet whilst research has been undertaken, and theories put forward by management and their psychological advisers to achieve a higher output in production and de-skill certain members of the workforce, unsafe work practices have still abounded. These aspects will be examined in the following chapter.

49. Gunningham, N., Safeguarding the Worker: Job Hazards and the Role of Law, Sydney, Law Book Co., 1984, p.68.

CHAPTER 3

PSYCHOLOGICAL THEORIES - INPUT INTO CHANGE

...joint consultation must be encouraged. Unions and management should therefore ensure that they have ready access to professional assessment of and advice concerning the degree of risk in the relevant work situation.

Dr. Fallen Cumpston:
The History of
Occupational Medicine
in Australia, 1988,
p.39.

This chapter is primarily concerned with psychological theories that have had an effect on physical working conditions. From the earliest recorded history of work, whether it be voluntary or slavery, work has played an active part in the premature deaths of humans. Industrial psychologists, whether they be protagonist or not, have had tremendous input into reforming work structures and the methods under which work has been performed. Workers have been portrayed as repetitious robots as a means to raise production levels to meet managements' sustainable quotas. Many of these issues need to be examined in the light of employers and unions sharing a common notion of developing a flexible and efficient multi-skilled workplace, and in so doing giving the worker more autonomy in contributing to the decision-making processes that affect their working life. Without exception, occupational health and safety should be one of the primary objectives.

Early Theories

Scientific concern with manual workers, and work associated problems, is of fairly recent origin. References are scattered on this subject, however some may be traced back to quite early times in the history of civilization.(1) Hunter states that disease, misery, and premature death due to the organisation of work is as old as work itself, with work conditions for slaves

1. Brown, J.A.C., The Social Psychology of Industry, London, Penguin, 1980, p.11.

being recorded in Egyptian gold mines dating back to 50BC:

And this they do without ceasing, to comply with the cruelty and blows of an overseer. The young children make their way through the galleries into hallowed portions and throw up with great toil the fragments of broken stone, and being it out door to the ground outside the entrance.....for there is no forgiveness or relaxation at all for the sick, or the maimed, or the old, or for women's weakness, but all with blows are compelled to stick to their labour until worn out they die in servitude.(2)

By the 1st century AD, Roman physicians knew of the toxic effects of lead and mercury. It may be possible that they knew of the dangers of asbestos too, because they used cloth face masks to protect weavers of asbestos cloth from the inhalation of asbestos dust. The famous Greek philosopher, Socrates, was also aware of the effects of labour on workers, though being a privileged member of Greek society, he would not have had too much concern for workers' health.

What are called the mechanical arts, carry a social stigma and are rightly dishonoured in our cities. For these arts damage the bodies of those who work at them or have charge of them, by compelling the workers to a sedentary life and to an indoor life, by compelling them, indeed, in some cases to spend the whole day by the fire.(3)

It was during the Renaissance that observations of the plight of workers were recorded more soundly. Agricola and Paracelus, official physicians to the mining

2. Hunter, D., "The Diseases of Occupations", London, Hadder and Stoughton, 1975, p.7, cited in "Work Hazards", April '84 No.18, Publication of the Workers Health Centre, Lidcombe.

3. *ibid*, p.11.

town of Joachimothol, wrote in 1556 of the connection between work and disease.

...some of the mines are so dry that they are entirely devoid of water and this dryness causes workmen even greater harm, for the dust which is stirred and beaten up by digging, penetrates into the wind pipe and lungs, and produces difficulty in breathing and the disease which the Greeks called asthma. If the dust has corrosive qualities, it eats away at the lungs...(4)

Documentation and publication by physicians marked the beginning of modern occupational medicine in 1713, where doctors were recommended to enquire as to their patients' occupation. In 1817 Percival Pott was the first doctor to describe scrotal cancer in chimney sweeps, and attributed its cause to the occupation. He also suggested that cancer may be linked with a chemical substance, the soot. Modern medicine has confirmed that carcinogens in the chimney soot are comprised of benzo pyrene and benzathrathe. Both chemicals present a cancer hazard today, as they are found in coal, tar, coke oven emissions and coal tar pitch.(5) Major discoveries in industrial chemistry (particularly in the chemistry of coal) led to dynamic inventions and developments in coal production, steel, iron and textiles during the period between 1760 and 1830, the period known as the Industrial Revolution. This marked the beginning of our modern capitalist

4. *ibid*, pp.27-8.

5. Hunter, D., *op, cit.*, p.28, cited in "Work Hazards".

society, and transformed England from an agrarian society to that of an industrial society.(6)

Industrial Psychology

The industrial psychologists too have laid claim to be represented in the 16th century. John Huarte wrote in Spanish, later translated into English, The Tryal of Wits which was the first attempt made to discover someone's expertise and give them the sort of training for which they would be most suited. In the 18th century, another psychologist, Coulomb, studied human movement, work and fatigue. This study was further recorded by Morey in the 19th century. However, modern industrial psychology did not really begin to gather momentum until general psychology had become an experimental science in and around 1879, a time when Wilhelm Wundt and the University of Leipzig opened the first laboratory entirely devoted to the scientific study of human behaviour.(7)

Despite its infancy, industrial and organisational psychology has had a fascinating and complex history. As with most areas of psychology, its roots can be traced back to experimental psychology, that traditional part of the discipline which seeks general laws or principles relating to the behaviour of its subject matter.

6. ibid.

7. Brown, J.A.C., op. cit., pp.11-12.

These laws of psychology are attempts to describe how people or animals respond to or act towards certain criteria, systematically manipulated by the experimenter. Industrial and organisational psychology has also been influenced by developments in the industrial engineering field, which include time-and-motion studies and the design and arrangement of machines and work. Three distinct forces - experimental psychology, differential psychology and industrial engineering - all combined to define a new area called industrial psychology, which was pioneered by Hugo Munsterberg.(8) His belief was that the aim of industrial efficiency rested in the ability of workers to concentrate their attention solely on what was required to complete a good job performance. He saw trolley operators as having to have a broad field of concentration, to assist in identifying and possibly avoiding accidents ahead of them. Munsterberg used his scientific laboratory design tools, machines, work stations and work routines, and attempted to assimilate and identify the workers' role with tools and machines. He also evaluated the relative efficiency of various worker-machine process combinations. In fact, for the first twenty to thirty years of this century, this was the primary objective of the industrial psychologist.(9)

8. Landy, F.J. and Trumbo, D.A., Psychology of Work Behaviour, Illinois, The Dorsey Press, 1976, pp.1-3.

9. *ibid*, p.3.

Scientific Management and Psychology

The approaches which pervaded the early part of the 20th century were classic organisation theory, and scientific management theory. Early in the century F.W. Taylor proposed a system of scientific management theory for making the conduct of work-related activities more efficient. Taylor assumed that individual workers valued economic incentives, and would be willing to work harder for higher monetary rewards. Munsterberg, conducted psychological research on physical working conditions, such as heating and lighting, while attempts were made by economists, psychologists, and engineers to identify "the one most efficient system for the production of goods and services". The worker was not considered, and training programmes of this period were only directed at reducing individual differences in behaviour.(10)

One of the first substantial efforts which attempted to break with this restricted view of the worker were the Hawthorne Studies, conducted from 1927-1932 at the Western Electrics Hawthorne plant in Chicago. The research, led by Australian Elton Mayo, initially wanted to test the relationship between the effects of illumination intensity on worker productivity. The findings were quite startling in that they highlighted

10. *ibid*, pp.340-1.

See also Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia, South Melbourne, Macmillan, 1991, pp.53-4.

the fact that if workers had environmental changes made, production did not alter. The only significant change was that the workers should establish their own standards of what production and quality should be and they were more interested in peer approval than in earning higher wages. The Hawthorne Studies also revealed that informal organisations had more power to motivate workers than formal organisations. At the end of the research study, productivity rose by 30 percent, and the conclusion arrived at was that when workers were allowed to participate in the research, being listened to, being asked for opinions and ideas, they then had a sense of job involvement and partnership with management in a common endeavour, the company and their employment.(11) With management listening to workers' concepts and ideology of how a job could be done easier, faster or in a safer manner, workers were given a deeper sense of involvement.

Industrial Organisational Psychology

Industrial organisational psychology is about selecting the right person for the job, designing the right job for the person, and training the person to do the job well. Similar methods are now in operation

11. Rachman, D.J. and Mescon, M.H., Business Today (2nd ed.), New York, Random House, 1979, p.152.

in some of Victoria's manufacturing industries where workers, through on-the-job training from technical and further education centres (TAFE) are slowly being multi-skilled in their production lines. As a result, self-esteem and morale has been raised and with this an added confidence and enthusiasm develops. In brief, the TAFE programmes have been in operation in workplaces for process workers since 1991 as a result of a tripartite agreement between unions, management and the Federal government. The primary idea was to multi-skill process workers and offer them a direct career path, something they had never had previously, whilst at the same time raising Australia's manufacturing base in order to compete on the world export market.

The nature of Australian modern industry and its excessive reliance on Taylorism has moved the worker of a lower level job to the position of a narrowly specialised and repetitious robot. The activities so performed are minutely prescribed so that individuals have little discretion over what, how, or when, they can do their work.(12) In particular this appears to be true for assembly line workers in industry, and many of the clerical positions in business, government and industry. This type of work which is long, lonely and anti-social, has as number of drastic side-effects resulting in

12. Dunphy, D.C., Organizational Change by Choice, Sydney, McGraw-Hill, 1982, p.145.

psychological and physical ill health in the form of stress, disease or injury resulting from fumes, gases, noise, heat, cold and vibration, and quite often a multiple of the hazards mentioned above. As well there are often manual handling and material handling tasks to complete in the form of repetitive lifting and moving of heavy loads.

Dunphy reports that the above did not happen "by accident, but by the development of a basic philosophy of work design".(13) He further believes that what Taylor, and those with similar ideas, failed to realize was that "the division of labour can create as many problems as it solves".(14) Some of these problems are basically lack of communication and co-ordination, and poor motivation. Over later years these problems have been viewed as being over-specialisation, which can lead to the disintegration of a total process, and indicating how repetitious de-skilling work practices may create apathy and even rebellion in the workplace. Further, supervised activities involves a very narrow span of control (one supervisor and a few workers), which in turn creates a tall hierarchy in large organisations with many levels. Communication then becomes a problem.(15)

13. *ibid*, pp.145-6.

14. *ibid*, p.146.

15. *ibid*, pp.246-7.

The preference for highly specified, low-skilled operations has not changed too greatly over the years, despite strong criticism of it since the 1960s.

In summary, according to Dunphy, the current technocratic work design principles are, external design control, specialisation, technological dominance, repetition, de-skilling, equalised "distributed" workloads, work measurements, individual financial incentives, minimal social interaction and close supervision.(16) It could be argued that the technocratic work design principles may have had a powerful de-motivating effect on workers, for the following reasons. Management tries to exert more and more control over the employee and the work being performed too often by downgrading or ignoring human capabilities, by de-skilling workers, and setting work standards which in turn create alienation, boredom, hopelessness, apathy and even resentment.(17) For example, many Victorian process workers at Rockwell ABS, Ericsson Australia, VDO Australia and Fallshaw Castors have advised that they had experienced the abovementioned effects of technocratic work design and firmly believed that this is a destructive effect on their self-esteem

16. *ibid*, pp.147-8.

17. *ibid*, pp.148-9.

which in turn affects work performance. However, over the past eighteen months workers have noticed minor changes, after they too started participating in workplace training programmes and union/management consultative committees.

Changes in the structure of the workforce have occurred for blue and white collar workers, from the manufacturing industries to the service industries, which have no necessary connection with a "rise or fall in the level of skill", according to Bramble. This is borne out by both the relative wage levels and the nature of the work itself.(18) A great deal of work in the white collar sectors is low paid, repetitive and dead-end. An example may be in the service sector - a credit card processor, and in the insurance industry - a clerk. There is a distinction between multi-skilling, and the combination of a number of unskilled tasks in the fields where technology does reduce the relative importance of unskilled workers, and this is not necessarily the increased use of multi-skilled tradespeople.(19) Bramble asks the question - "what is meant by a rise in the average skill?" A high average may conceal increased polarisation, and there is no technological

18. Bramble, T., "The Utopian Fantasy of Post-Fordism" in the Socialist Review Winter 1990, Issue 2, Melbourne, International Socialist Organisation, June 1990, p.91

19. *ibid*, pp.91-2.

inevitability in de-skilling workers, as changes in technology may lead to new skills and responsibilities emerging in place of old ones for some workers, while the main thrust remains towards de-skilling.(20)

A case study of the Australian car industry by Wilkinson has shown that management has started using outside companies to service and repair machinery, which in turn has led to a reduction of tradespersons employed. This in turn leaves the existing tradespersons to do the more menial and less sophisticated work, and at times contend with the more monotonous aspects of preventative maintenance.(21) Wilkinson also mentions that manufacturers who offer new machinery to industry, also offer service contracts which supply maintenance tradespersons who have been known to work full-time in factories that a manufacturer has supplied.(22) Similarly, the Met, SEC and Vic Roads offer service contracts to maintenance personnel and companies to install and repair certain machinery, even though they have their own engineers and advanced tradespersons capable of the required installation and maintenance. Responses to interview questions have indicated a number of concerns from tradespersons over the fact

20. *ibid*, p.92.

21. Wilkinson, R., "Management Strategies in the Motor Vehicle Industry" in E. Willis' (ed.) Technology and the Labour Process: Australian Case Studies Sydney, Allen and Unwin, 1988, pp.140-1.

that by not working on sophisticated new equipment their career paths are restricted as practical hands on experience and education are needed for advancement. At the same time many trades staff have been offered retirement packages as maintenance has been given out more and more to private contractors and companies.(22)

In many companies secretarial workers, stenographers and typists, were organised into typing pools, having little or no direct contact with those who employed them.(23) Pool work was considered, or assumed, to be the training ground for the aspiring private secretary. However, this in fact was not usually the case, and the secretarial worker often became polarised and specialised in a singular process. An interview respondent reported that many juniors received low wages for laborious, repetitious typing in many of the legal and insurance firms of the 1960s and 70s. The juniors were quickly told "this is the training needed and the only road to travel to become a private secretary". Further, juniors were regarded as dispensable, as many school leavers, particularly young girls, needed employment, and the

22. Interviews conducted with J. Davall, J. Katsirubas, and G. Anastasiadis.

23. Butler, D., "Secretarial Skills and Office Technology", in E. Willis (ed.) Technology and the Labour Process: Australian Case Studies, Sydney, Allen and Unwin, 1988, p.28.

typing pools of trainee junior secretaries held more status than working at Coles or Woolies.(24)

The changing office environment has brought with it a changing technology, and the demand for secretarial skills has clearly diminished. The word processor has left the typewriter as an obsolete piece of machinery. In addition to the skill of typing, those of shorthand, filing, duplicating, switchboard operation and so on are skills which are gradually fading from the secretary's domain, as many are duplicated on the word processor. Butler states that certain aspects of typing skills have become obsolete since word processors have typing skills built into them and just a touch of a button can produce a variety of results.(25) As a result, the worker's skill is not used and eventually becomes obsolete through either more sophisticated equipment in the office, or just through lack of practice.

It appears certain that word processing is a skill that the secretarial worker must now be able to master. However, many employers do not recognise this skill in terms of remuneration, and as the labour process continues to change, so will the definition of

24. Interview with J. O'Shea who was employed as a junior pool typist during the 1960s in number of legal firms, 15 October, 1990.

25. Butler, D., op. cit., pp.28-9.

work related skills. Old skills should be aggregated with the new, as they are far superior to any existing skill that may once have been needed. Butler refers to such a transition of skill as follows:-

Without doubt, the ability to operate a word processor is a significant new secretarial skill. Firstly, in terms of the criteria for skill a word processor represents a change of skill in the worker herself. Secondly, there is also a change in the job itself as office systems change. Thirdly, however, in terms of the political and social definition of word processing as a skill, there is a lag on the part of the employers who in many cases do not recognise word processing as an extra skill which deserves extra remuneration.(26)

There appears to be no fundamental change open to the worker to escape the type of technology which treats him/her as a part of automation that simply receives orders and programmes from a machine.(27) This leaves the question - how should unions view new technologies and what criteria are they prepared to accept on behalf of their members?

Industrial Democracy - Injury Safety Policy

Mathews believes that to achieve industrial democracy, the worker and unions have to confront

26. *ibid*, p.29.

27. Mathews, J., "Trade Unions and Work Organisation" in E. Willis, *op. cit.*, pp.179-80.

singular concrete issues, and solve them individually. Also, the labour process policy and its wider implications of new and changing technologies to the workplace should be seen as providing a well-defined career path for workers; a minimum of job classifications with uniform skill graduation between them; it should be authoritarian in its operation; there should be a clear sequence of operations which lead to a finished product; it should include mental as well as physical work; there should be adequate stimulus, interest and variety; there should not be repetitive actions; and it should be without uncontrollable risks to safety and health.(28)

It is the last issue that Mathews addresses further, health and safety, where he says that "health and safety agreements cover a considerable part of the Australian government employment". Victoria has agreements in both the public service and instrumentalities, and the private sector, notably the national pulp and paper industry and the airlines.(29) These agreements are established through negotiation and mediation with unions, health and safety representatives and employers in order that there is some measure of control over the evaluation of health and safety risks to workers. Health and safety processes have been in operation in Victoria since 1985, and as a

28. *ibid*, pp.180-1.

29. *ibid*, p.181.

result the occupational health and safety representative has, through legislation, the right to discuss the dangers of work-related problems and their possible rectification with management or management's representatives. The health and safety agreements have provided a giant step forward in what Mathews calls "industrial democracy", the evaluation of technological hazards to health which will "evolve logically into a wider evaluation of the effects of any changes that have prospered with regards to the likely labour process as a whole", and which in turn would have an effect on the economy and the society as a whole.(30)

Mathews cites an example of rail workers who in 1983 were faced with extensive unemployment and de-skilling through technological change. As a result, rail unions launched a sophisticated research and consultation campaign, via a working party. The results gave the union a constructive approach to the questions of employment, skills and workshop demarcation. A similar proposal was extended to white-collar clerical employees, over the issues of telephonists and teleprinter operators.(31) Another definition could be the co-determination of industrial issues, or as Davis and Lansbury assess the term "the significant influence of

30. *ibid*, pp.181-2.

31. *ibid*, pp.183.

workers in the important decisions that affect their lives at work". This could involve the process of direct participation with workers, as in autonomous work groups, and their indirect participation through unions.(32) Whatever the case, negotiation of consultative agreements on occupational health and safety has opened the door for more general agreements on managing the introduction of technological change. Or, in other words, the elimination of hazards of a technological nature before new equipment is purchased or installed. This is done, according to Mathews, within consultative structures by the elected health and safety representatives and joint union-management committees, and certainly not by the an industrial relations system, when unions conceded the right of management to determine what constituted a safe system of work.(33) Unions and management traded working conditions for monetary rewards, termed "danger money". Under the umbrella of danger money came heat, height and dirt, all of which, in managements' view, had to be in excess of normal working conditions.

A number of questions in respect of occupational health and safety in post-Fordist industrial relations

32. Davis, E. and Lansbury, R. (ed.) Democracy and Control in the Workplace, Melbourne, Longman Cheshire, 1986, p.23.

33. Mathews, J., Tools of Change, Sydney, Pluto Press, 1989, p.143.

need to be examined, for instance, what are the limits imposed on workers to become involved in decisions about the introduction of new technology which could affect their remuneration in the workplace? To what extent does the historical development of occupational health and safety legislation demonstrate any awareness of the need for workers to contribute to the decision-making process in respect of new technology which had implications with regard to their health? Answering the latter question first, large industrial organisations, whether private or government, such as General Motors, Ford, the State Electricity Commission of Victoria, the Williamstown Naval Dock Yard, Hawker De Havilland and many others, have developed health and safety programmes which are in policy form. An example is the General Motors Corporation safety policy which is in every division of the General Motors organisation throughout the world. Australia is subject to this policy. In brief, the safety programme is based on the concept that safety is the individual and personal responsibility of everyone in General Motors - management and employee alike. In the final analysis, according to Frank Hill, Manager of Plant and Employee Security, General Motors-Holden Melbourne, safety depends on each individual's own responsibility towards their work peers and themselves. He states the basic concept of General Motors' principles of safety as follows:-

Each year a substantial investment of time and money is made to ensure that the equipment and tools in our plants is properly designed from the standpoint of safety and that our plant layouts are as safe as it is possible to make them. But physical things have to be operated and used by people. In the final analysis, their safety depends on the factor of people, the human factor.

It is the individual who is ultimately responsible for his or her own safety and for the safety of those around them.(34)

The implementation of this policy is documented and known as the Seven Basic Principles of Safety, covering the following points.

First providing active top management support by maintaining a comprehensive safety programme at all times, meeting with key supervisory personnel monthly to review safety performances, and taking action necessary to improve safety conditions. Second, maintaining adequate safety personnel - each plant should have sufficient well trained personnel to ensure continuous careful attention to safety. Third, developing safety instructions for every job - written rules and instructions setting out safe practices for each job

34. Hill, F., "Occupational Safety and Health: A Joint Responsibility", Paper Six, in Health and Safety at Work, A Review of Current Issues, North Ryde, CCH Australia Ltd., 1980, pp.68-9.

assigned are necessary. This material should be used as the basis for safety instruction of new employees and employees transferred to jobs, and then reviewed on a timely basis with all employees. Fourth, instructing all new employees - all new employees should be thoroughly instructed in general safety policies, rules and procedures before being referred to their supervisor for job training. Subsequently, the safety performance of new employees should be reviewed regularly. Fifth, operating through supervision - supervisors are the key people in the safety programme because they are in constant contact with employees. Superintendents should hold meetings monthly with their supervisors to review safety conditions, general safety policies, and specific situations. Sixth, making every employee safety minded - co-operation of the individual employee is vital to the success of the safety programme. Continued education is required to make certain that all concerned, management and employees alike, do their part of protecting the safety of the individual at all times. Every available safety medium may be used. Finally, extending efforts beyond the plant - special attention should be given to off-the-job safety, as employees have more accidents away from work than they do on the job. Objectives should include efforts to promote the safety of employees and their families by maintaining a comprehensive safety programme for employees driving company-owned vehicles, providing material on highway safety to aid employees

driving their own cars, encouraging employees to develop safe practices in the home, on the farm, and in recreational activities, and participating in community safety activities.(35)

It can be seen from the above comprehensive safety policy of the General Motors (G.M.) organisation, that the responsibility of occupational health and safety rests with management and employees, whilst both on and off the job.

The next step, according to Hill, was the development of a safety structure within the organisation that would establish direct responsibility at every level, and provide an effective system of communication for all safety and health matters. This would give assurance that associated problems would reach the appropriate level for decision-making and that there was an information flow in all appropriate directions throughout the structure. (See Appendix 2).

Following the conclusion of meetings with the Director of Personnel Relations, the Managing Director and all departmental directors, the decisions stemming are then communicated to the next level of management and

so on throughout the structure. In addition, there exists three specialist sub-committees, which supplement the Plant Managers' Safety Committee. The first is the Hazardous Materials Committee, the second the New Machine Safety Committee, and last the Environmental Safety Committee.(36)

Two interesting points are brought forward in Hill's paper, these being employee obligation and the role of trade unions. He believes employee obligation starts with the contract of employment, and the majority of employment contract contain clauses which require the employee to work safely and with reasonable care. This requirement was virtually duplicated in Section 25 of the Victorian Occupational Health and Safety Act 1985, and then, five years later, a legislative requirement. Hill examines both points in detail, and queries the fact that once employees sign the contract of employment, how much thought do they actually give to themselves working in a safe manner. He also believes the union movement should conduct educational campaigns around safe working procedures for their members. Such campaigns, says Hill, would reduce occupational accidents, and should be similar to the G.M. safety policy, which would in turn encourage people (union members) "to think more deeply about their own personal safety and the safety of others

36. *ibid*, pp.70-75.

who may be injured as a result of unsafe acts or practices".(37)

Any large complex organisation like General Motors should have a sophisticated safety programme in operation. However, accidents still happen, and the effectiveness of the organisation is to be viewed and measured by the number of accidents occurring, and how the safety policy translates into actual accident prevention activities in the workplace. This in turn could depend to a large extent upon the employees and their supervisors. Not all employers, according to Broughton, Assistant Director of the Industrial Safety Division, Department of Labour and Industry, Adelaide, have accident prevention plans like those of General Motors.(38) It is the many small employers who suffer industrial accidents, and inspectors from the Department of Labour and Industry direct their efforts towards them in an effort to rectify the problem.

Broughton mentions a safety policy for industry which was in place in South Australia prior to the Occupational Health, Safety and Welfare Act 1986, and which had many similarities to the subsequent Act.

37. *ibid*, pp.75-6.

38. Broughton, R.N., "Commentaries" in Health and Safety at Work: A review of Current Issues, North Ryde, CCH Australia Ltd., 1980, p.79.

...employers of more than 10 workers are required to prepare a written statement on their company's safety policy, and arrangements to implement that policy. The statement must be brought to the attention of all workers. It must be put on display so that workers can perceive what employers see as being their obligation in providing a safe place in which to work and should be revised from time to time depending on circumstances. This commits the employer, but what can be done to involve the worker? It is my view that a long education programme will be needed before every worker is safety conscious all the time, or indeed, for most of the time. Also, much of the effect of such education must be most when a worker is told, "Work safely all the time, and don't get injured. However, if you are injured, these are the compensation benefits to which you will be entitled."(39)

An on-going educative programme is needed for the elimination of industrial accidents, not only for employees, but also management. Not all workers are involved in the decision-making process.

When Hill's paper was presented in 1980, worker participation and involvement in decision making was not a meaningful relationship, and union participation in health and safety issues was limited. The reason then put forward why unions and employees were not meaningfully involved in occupational health and safety was that they did not have the wherewithall.(40)

39. *ibid*, p.79.

40. Bell, A., "Commentaries", in Health and Safety at Work: A Review of Current Issues, North Ryde, CCH Australia Ltd., 1980, p.86.

Eleven years further down the industrial track from Hill's paper, and six years of occupational health and safety legislation in Victoria, still sees many workers having to struggle against unsafe working conditions, although, not all workplaces fall into this category, as some employers do make employees aware of hazards and the behaviour needed to avoid them. Still, with eight Australians fatally injured at work a week, and 6,000 suffering compensatory injuries, the annual cost of workplace deaths and injuries, including compensation, lost production, re-training and welfare, totals approximately \$9,600 Million.(41) Victoria claims a life each week due to work-related causes, and approximately 30,000 Victorians are injured or become ill as the result of work-related incidents each year. These statistics indicate that each of Victoria's 900,000 workers lost one week from their jobs per year.(42)

From the above, it can be concluded that a large proportion of workers are still having accidents, and as a result education and training should become an important function of accident prevention, and possible subsequent elimination. However, the educative factor in accident prevention should only constitute one part of an overall occupational health and safety programme,

41. Stynes, J., Financial Review, 14 March, 1989.

42. The Sun, Tuesday, 4 October, 1988, p.34.

with the remainder resting with management's responsibilities towards workers, safe equipment and plants, and some study of what work is in today's society. This concept of work, management, and the protection of workers' health and safety will be elaborated on in the following chapter.

CHAPTER 4

VIEWS OF MANAGEMENT TOWARDS OCCUPATIONAL HEALTH AND SAFETY

Employees do have some responsibility for their own health and safety, but that does not lessen management's responsibility. Management creates nearly all aspects of the working environment.

"No other Investment can offer such Excellent Returns", publication by Occupational Health and Safety Authority, 1991.

This chapter explores the views and responsibilities that management has shown towards occupational health and safety over the last decade, and suggests that the majority of occupational accidents, injuries and industrial diseases that have occurred may have been avoided by careful planning and forethought between management and employee.(1) It is management's responsibility to control any unsafe acts within the workplace.

Management Strategies

To begin with, management selects, purchases, installs, designs and builds the equipment to be used in the workplace. It may also be said to be the sole owner and authority in relation to the handling, operation and maintenance of equipment in the workplace. Further, management compensates employees as a result of accidents, and directs, or should direct, the persons charged with the task of building safety into mechanical and electrical equipment, in planning safe and efficient manufacturing procedures and processes, replacing or repairing defective equipment, and in maintaining overall safe working conditions.(2)

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1. Department of Employment and Industrial Relations, Safety and Health at Work, Canberra, Australian Government Publishing Service, 1983, p.IX.
 2. Heinrich, H.W., Petersen, D., and Rose, N., Industrial Accident Prevention (5th ed.), Sydney, McGraw-Hill, 1980, pp.74-5.

Where management has control of the working environment they should be responsible for injury and sickness that may prevail in the workplace. This should include all chemical, physical, mechanical, electrical, psychological, ergonomic and biological hazards in a workplace which management has charge of. However, the relationship between management, work and the worker, offers a much more complex scenario than just that of management attempting to provide a safe work environment. Thought should be given by management in relation to two areas, the first being the introduction of some form of industrial democracy whereby workers have a direct say in the workplace through formally elected representatives, and the second being the concept of skill, especially the types of skill recognised in the workplace, and the methods and time required to gain the skills required to pursue any method of employment. The above is not to be confused with training, multi-skilling, job degradation, or de-skilling where one must take into account the nature of the latest technology implemented into work organisation or onto the shop floor, and management's ideology of what work is and the effect of work re-design, as management is often alienated from the worker and the tasks performed.

The issue of occupational health and safety in the workplace can be seen as a tool for industrial relations, especially for those workers who have received less

education and therefore taken on lower status employment which generates little or no motivation or involvement, and in turn can lead to ill health, apathy, accidents and industrial disputes.

The study of work, and the definition of what work is, varies greatly between sociologists to psychologists, historians, economists and workplace managers. The way work is organised for the worker by management may not end up being the manner in which the worker completes the task. Managerial staff focus on how work can best be organised for maximum productivity. The method of organisation of work, and the hazards associated with the specific methods of organisation that arise from the complexities of the various social and industrial factors, is often known as the labour process.(3) This process has dramatically changed over the years with regard to the nature of the work that people have undertaken, and particularly regarding the relationship the worker has with new technology. Prior to these changes taking place it was very common to have long production lines, mass production of identical components and parts, fragmentation of jobs, and the incorporation of knowledge and control of the worker and middle-level management by a centralised management hierarchy -

3. Willis, E., (ed.) Technology and the Labour Process: Australian Case Studies, Sydney, Allen and Unwin, 1988, pp.2-3.

a Fordist mass production concept, which became known as Taylorism, or scientific management theory.(4)

David and Wheelwright refer to "management by stress", an intensification of Taylorism, which is said to have developed during the 1960s, adding a whole new dimension of management measures into a more elaborate and comprehensive code of worker control, time control, personnel control, efficiency wages, pay scales tied to ability, rigid hierarchical status, ranking for workers and the shop supervisory system known as "shokusei" - literally, work control.(5) This control on assembly tasks demanded the smallest of actions, as such tasks had been broken down to their minimum, thus requiring little training of the worker. If a faster approach, or method was found to complete a job, even by workers themselves, a further task was given to fill in the time saved. It was observed that no matter how well workers learn their jobs, there is always room for continuous improvement - "managers know that workers continue to know more about their jobs than high management does".(6) Thus any time saved in the work process by the worker

4. Bramble, T., "The Utopian Fantasy of Post-Fordism", in Socialist Review, Issue 2, Winter 1990, Melbourne, p.86.

5. David, A., and Wheelwright, T., The Third Wave: Australia and Asian Capitalism, Sutherland, Left Book Club, 1989, p.157.

6. *ibid*, p.158.

is delegated by management to another task. Secondly, rather than workers learning marketable skills, they become "multi-skilled" by learning a series of job specific tasks that accordingly depend on physical stamina, manual dexterity and the willingness to follow instructions accurately.

Multi-skilling has developed as a tool for management seeking flexibility to respond quickly to the ups and down of the market. It requires workers who can perform many different jobs, which may be assigned by management rather than by traditional group leaders..... Hence, the nature of speed-up is not in increasing the speed of the assembly line as previously, but by giving each worker more tasks to perform.(7)

Moreover, with the development of new technologies, a small key group of highly skilled specialists will be looked after by companies, with better working conditions, higher salaries, permanency guaranteed for total flexibility of jobs performed in the workplace, and no need to strike or stop work. This permanent structure of workers is supplemented by casual sub-contractors doing specialised jobs such as maintenance, cleaning and other unskilled employment, who will always be under the threat of unemployment, and are being played off against each other by such aspects as stable wages, extra workload, longer work time and the threat of how

7. ibid, pp.158-9.

management can always get other sub-contractors if certain demands are not met. At the bottom of this pyramid structure lies the day labour force, where workers will be picked when required, to be used to perform dangerous and dirty jobs.(8) With the massive growth of unemployment and contract labour, companies are using contractors to replace permanent workers. As an example, Skilled Engineering, which offers a total sub-contract workforce comprising maintenance, production and warehouse workers.(9) Many factories too, are moving in this direction, such as Southern Paper Converters, Australian Paper Mills and Amcor, both large Melbourne and Sydney concerns.

From a worker's point of view, they have less control over their work environment, less chance of getting remuneration, and they dare not complain about safety, as with the onset of the recession and unemployment, as mentioned above, workers are threatened in their own employment, as they are easily replaced. Hence, management gains greater control and can introduce changes into the workplace more easily. The building industry in Melbourne is a prime example where employers are supplying casual sub-contractors on different sites. The Melbourne based firm, Trouble Shooters, aim to supply

8. ibid, pp.160-1.

9. ibid, p.161.

builders with highly motivated and self-employed tradespersons and labourers.(10) Employment is on short contracts. Victorian State Instrumentalities, such as the Board of Works, and the Ministry of Education, as well as TAFE Teaching Services, and many others, employ sub-contractors through similar methods. The utilisation of sub-contractors will be discussed further in the following chapter.

Industrial advisers employed by management stress that two of the most efficient means by which human resources may be utilised is to adapt the person to the job, and the job to the person by vocational guidance - systematic selection and promotion principles, equipment design , job design, work area refurbishment, and management-employee social activities. Secondly, intelligence and aptitude tests, factorized tests, projective and personality tests, and so on are all greeted with much enthusiasm and favouritism by management.(11)

Group relation psychology, according to Nikolas Rose, elaborates its theories around the "new language of the workplace" - morale, solidarity, communication, attitudes, leadership, the primary group, motives and

10. *ibid*, pp.162-3.

11. Rose, N., Governing the Soul. The Shaping of the Private Self, London, Routledge, 1988, pp.80-1.

purposes. Newer methods of work organisation are conducive to mental health, to industrial efficiency, to social democracy and adjustment.(12) The use of groups in an industrial setting has many advantages over singular work situations, in that group decisions carry more weight, information and experiences are readily shared, ideas are listened to, critical evaluation judgments are more attainable over work systems, feelings are expressed more openly, all of which can lead to less errors in production and in turn have a positive effect on safety.(13) Ericsson Australia, Rockwell ABS, and V.D.O. Australia, Victorian companies, are all large manufacturing organisations in either the motor or telephone and electronic and allied components industries, and all operate work groups. These groups are known to the employees as work cells, which comprise no more than ten persons, assisting individuals to develop personal relationships with each other. In such a situation cell members have expressed their concerns over each others lack of safety in production techniques by such comments as "why aren't you wearing safety shoes?", "you have to wear safety glasses", "the fume extractor fans don't work, will somebody get the supervisor", and so on. With the advent of the above in these organisations, absenteeism has decreased,

12. *ibid*, p.81.

13. Reitz, J.H., Behaviour in Organisations, Illinois, Richard Irwin, 1977, p.397.

productivity runs smoother and shown increases, and the workplace is decidedly happier than pre-work cell times.(14)

Evolution of Informal Work Practices

The protection of workers' health and safety has involved and been a major concern to a number of varied organisations, commissions and working parties throughout Australia, many of which were brought together during the mid-19th Century. Today, this involvement is on a national, state and territorial basis, resulting in a number of Acts and Regulations being passed to safeguard the worker, and public in general, from industrial accidents. There is no question that many important improvements have taken place, and many employers now formally recognise that work can kill, maim, and ruin the health of workers.(15) Union and non-union employees alike enjoy the legislative recognition that occupational health and safety standards and guidelines have brought. It is believed that careful nurturing of these standards by unions, employers and governments should be maintained with the comprehensive network of Standing Committees Working Parties all coming under the umbrella of Worksafe Australia. (In April 1986 the National Occupational Health and Safety Commission adopted the title Worksafe Australia.)

14. Interview conducted at Ericssons, Rockwell ABS and V.D.O. with cell workers, February-May, 1991.

15. Berger, Y., "Bringing Health and Safety to the Workplace", Unpublished Paper, June 1989.

One may ask the question, "why isn't everything under control with regard to occupational health and safety, as employers are now legally responsible for the conduct of a safe workplace?". In this regard, Dr. Berger concludes that -

It's because the effect is still young and immature, attitudes are old and entrenched and employers reluctant to do more than they must, too often not even that.(16)

What Berger believes first is that the pervasive attitudes of employers cause a "battle on all issues, every standard-setting effort and every attempt to improve occupational health and safety". This often results in protracted meandering debates on matters which require a quick solution. So often when experts are called in, it has been established that employers have little knowledge of occupational context and as a result not much is achieved. Secondly, publications and information which unions have attempted to distribute, very often does not reach the workplace, and on occasions when it does it takes far too long to do so. An example, is the fact that for approximately three years Worksafe Australia has been advocating that Material Safety Data Sheets (MSDS) be supplied in a standard form to all users. The following statement indicates Berger's view

16. *ibid.*

on the importance of MSDS in regulating correct work practices and saving lives.

MSDS is a critical item of information that can save lives and is important to proper decisions about work practices. To our constant and great disappointment a vast number of managers have not even heard of MSDSs or haven't yet done anything to implement a proper MSDS system at their enterprise.(17)

In Victoria, as mentioned previously, occupational health and safety legislation and regulations place the responsibility on employers to put programmes in place that meet the needs of employees' safety, and it is also the employees' obligation to abide by the Occupational Health and Safety Act. As well, there are a number of schemes Australia-wide which require employers to protect the working environment of their employees.

Hazardous materials is only one of the many categories of workplace dangers. In this regard employers throughout Australia have at their disposal relevant information available from the National Chemical Notification and Assessment Scheme, the National Occupational Health and Safety Commission,

17. *ibid.*

(Dr. Berger discussed this issue when interviewed at the Trades Hall Council, and at the same time referred to his paper "Bringing Health and Safety to the Worksite", May 1990.)

MSDS provide a standardised set of basic accurate health and safety information about chemical substances. It should describe the health effects, first aid procedures, and recommended safe working conditions. (See Appendix 3.)

the Guidance Note for Completion of a Material Safety Data Sheet and a Hazardous Materials Information File all of which covers the broad spectrum of Federal and State arenas.(18) In this regard one may come to the conclusion that managers by and large do not appear to manage occupational health and safety problems very well. There is no suggestion that persons who are designated as managers should only take the responsibility for current levels of workplace injury. However, management falls into different categories, such as sales managers, research and development managers, marketing managers and personnel managers, all of whom are affected in some way by workplace injuries. Many managers essentially view workplace injuries and problems arising in occupational health and safety areas as a collection of disparate single issues, all requiring singular intervention and different responses.(19) It could be said that managers believe that workplace injuries are essentially technical problems, requiring technical solutions. In this way, workplace injuries and their consequences could be perceived as occurring outside the work time of the

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18. Simpson, J., "Specifying and Evaluating Hazardous Materials Information Systems for use in your Company", in The Solutions Proceedings Part 1, Internal Occupational Health and Safety Convention Victoria, October 1988.
 19. Toohey, J., "Managing health and safety effectively? or is it a bit...technical?", in The Journal of Occupational Health and Safety Australia and New Zealand, Volume 3, Number 3, June 1987, Sydney, CCH Australia, p.235.

organisation, and so any underlying causes, dynamics and consequences of injuries would never be identified as occupational health and safety issues. Toohey's view of managers solving technical problems in occupational health and safety is as follows:-

Decision makers (managers) can then distance themselves from the outcomes and seek "expert" assistance from outside their sphere of management influence to help solve a technical problem rather than confront an "organisational" problem. This had led to a crisis approach to managing health and safety problems...The contributing factors are usually a combination of organisational, managerial, technical, environmental, industrial and ergonomic features.(20)

In addition to the above, workplace injuries are believed to be peripheral to the mainstream function of the organisation, and a further misunderstanding is that managing injuries is somehow a matter of choice. Managers can also have a propensity to inappropriately delegate health and safety responsibilities. In other words, senior management would delegate operational responsibility for occupational injuries to line management, and at the same time remove themselves from executive responsibilities through a range of unintentional or intentional neglect.(21)

20. *ibid*, p.235.

21. *ibid*, pp.236-7.

Just to say that senior management must participate on occupational health and safety committees, and appear to be well informed on safety programmes and policies, does not imply that they have expertise in the technicalities of occupational health and safety and the rectification of such problems.

A working party which was convened by the Safety Engineering Society of Australia presented a paper at the Seminar on Occupational Injuries held at the Royal College of Surgeons, Melbourne, in March 1973. It found there was a growing realisation that when accidents happened, they were caused by human error or lack of some form of control (rather than resulting from the acts of God or the working of malevolent providence), and they may in fact have been prevented by a variety of remedial activities taken at appropriate points in the causal sequence. These activities, in relation to work injury prevention, dealt with elimination and/or guarding of hazards, and the controlling of actions of people.(22) Accident prevention was defined as the process of working on hazards, and working with people, and could be expressed by the formula -

Hazards + People = Accidents.

22. Safety Engineering Society of Australia, a Working Party, "Engineering Techniques and Accident Prevention", 1973.

In other words, the industrial environment, coupled with human error, produces accidents.

The working party reported that the comforting thing about accidents was that hazards could be changed, and the behaviour of persons altered. Further, there was unreliability in both elements of work (hazards and people), which required an element of "doubling up" by tackling both together. As a result, it was suggested that a common language was essential, on the human side as a basis of instruction for individual employees, and on the engineering side to achieve early recognition and control of hazards.(23) Engineers were required to work as part of an overall management team, and therefore their approach was the same as for others in the workplace - the achievement of objectives with economy and safety. However, for such a prestigious paper in Australasia, presented by many renowned engineering academics, very little was mentioned in the areas of training, training methods, systems of training for management, or any legal approach to industrial safety. On the other hand, it did mention the gloomy fact that absolute safety is unattainable, as hazards appear in all forms, and there is always that reasonable risk of an accident occurring in the workplace.

23. Ibid.

Absolute safety is unattainable - there will always be some residual hazard in every form of activity. Experience has it that the closer one tries for "foolproof" safety the more costly it becomes. At any specific time there is a reasonable risk which is acceptable to industry and the community. This concept incorporates the belief that such a risk can and must be reduced in the future. Safety standards therefore must be regarded as changing with time.

Financial resources for any enterprise are certainly not unlimited. Compromises may therefore be necessary, but where risk remains, or put in this way, that hazards cannot be engineered out of the job with the resources available, effective training and supervision ensure that hazards are lessened and that danger is avoided.(24)

It could be suggested that by some form of integration of a strong legal Act and economic sanctions, industry could be compelled to bear the costs of accident prevention even to the point of reducing productivity to a level necessary to improve safety in the workplace.

During the late 1960s and early 1970s the Met, formerly known as the Victorian Railways, and other State instrumentalities, conducted many seminars for their workshop foremen and managers on "safety". These seminars were generally comprised of safety and planning, machinery, plant and equipment, safe operating methods, preventative maintenance, and recommendations.

24. Ibid.

The late Mr. Pat O'Shea, a former foreman fitter and turner with the Victorian Railways, Newport Workshops, who was a member of various safety committees, reported that safety training and education were an important part of a comprehensive approach towards health and safety within management, but only constituted a minor part in the overall scheme of industrial safety. The safety needs of employees varied considerably according to their position of employment. With fitters and turners, welders, electricians, and office workers there were always the hidden dangers in the workplace that were peculiarly applicable to each ones trade or profession. However, according to O'Shea, there was a common core of procedures regarding safety, and he believed all employees needed on-going training programmes according to their particular position. This is not to be confused with induction programmes, many of which were taught by one tradesperson to another. There was a lack of, or disregard for, follow-up safety programmes, as safety was usually taught at secondary school, or during an apprenticeship at a Technical and Further Education College (TAFE). The safety training for tradespersons assistants, labourers and cleaners was usually left to more senior colleagues.(25)

25. Information from personal papers and note books owned by the late Pat O'Shea, by courtesy of Mrs. E. O'Shea, Ascot Vale, August 1990.

According to many occupational health and safety representatives returning to work after undergoing a week's inhouse training at the Trades Hall Council's Occupational Health and Safety Unit, they appear to be ultra health and safety conscious compared to their peers at the workplace. They believe they are more aware of the hazards and injuries that arise, and have more knowledge and ability to detect hazards than other work colleagues, many of whom include full time safety officers and supervisors. In support of this belief Quinlan and Bohle state:-

Supervisors are often responsible for much of the safety training provided to shop floor staff and they should receive appropriate instruction in training strategies. As there is some evidence that experienced workers can be more effective safety trainers than supervisors, it may also be desirable to extend this instruction to a chosen group of such workers.(26)

Managing occupational health and safety is a challenging and complex task, as the causes of occupational illness, disease and injury are complicated and multitudinous. The causal factors that a worker may be associated with in the workplace may be any of a number of things such as physical hazards, including noise, vibration, lighting, electrical apparatus, heat,

26. Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, Griffith University, MacMillan, 1991, p.383.

cold, nuisance, dust, fire, explosion, machine guarding and working space; chemical hazards, including gases, dusts, corrosive elements, fumes, vapours and liquids; ergonomic hazards, including tool design, equipment design, job and task design, workstation design and manual handling; radiation hazards, including microwaves, infra-red, ultra-violet rays, lasers (non-ionising), x-rays and gamma rays (ionising); and biological hazards, including infections, bacteria and diseases (hepatitis, etc.) and skin diseases (eczema, allergic dermatitis, and skin cancer).(27) Other factors of an individual nature include training and skill levels, experience, attitudes, personality and non-work factors arising from the demands of domestic and social roles.

It can be seen from the above that to avoid hazards, formal work practices involving good occupational health and safety procedures are constantly needed in the workplace. Full participation and commitment by management and staff must be a central objective if any occupational health and safety programme is expected to bear fruit. In theory, management's role in occupational health and safety should be to eliminate, or absolutely minimise injury and illness at work. However, a large number of governing factors seem to paint a different

27. Edwards, K.J., et.al., "Train the Trainer", Occupational Health and Safety Training Information, Holmesglen College of TAFE, 1990.

picture of occupational illness and injury, which suggest quite different strategies for their elimination. The major focus, according to management, is upon unsafe individual behaviour, and poor design of the physical working environment. Strategies based on the above can be roughly divided into three groups, according to Quinlan and Bohle. The first is broadly concerned with the physical working conditions of the plant, such as machine guarding or the containment of toxic substances. Second is the medical and biological condition of individual workers which includes screening, monitoring and treatment strategies aimed at identifying workers who are susceptible to illness, and treating those who are in need. Third, is the concern with changing workers' behaviour, and includes a variety of educational and behavioural modification strategies.(28)

The above procedures adopted by management assess physical health and biological monitoring of the worker and the workplace. However, they are not the only management tool that focuses predominantly on the individual workers. Quinlan and Bohle state that the most widely applied occupational health and safety practices are primarily aimed at individual behavioural change, such as safety education and training, behaviour modification programmes, administrative controls and

28. Quinlan, M., and Bohle, P., op. cit., p.373.

stress management programmes.(29) Many different organisations, large and small, concentrate a great deal of their health and safety effort on education and training, which in turn makes the worker aware of workplace hazards, and the behaviour required to avoid them. However, there would seem to be a lack of this training for management, although personal accountability for the safety of employees is directly management's responsibility.

Many health and safety representatives have - particularly in the early stages - faced a lack of co-operation from those in middle and line management who have little or no training in occupational health and safety and who feel threatened by the representatives, seeing their role as an unwanted intrusion into managements perceived domain of control.(30)

Halfpenny makes an interesting point in that where employers have accepted the role of the health and safety representative, addressed the needs of their management and established the appropriate systems for handling health and safety issues, as well as providing adequate resources for health and safety, workplace improvements

29. *ibid*, p.382.

30. "Occupational Health and Safety: The Trade Union Viewpoint", a paper presented by John Halfpenny, Secretary, Victorian Trades Hall Council, at the International Occupational Health and Safety Convention, October 1988, Dallas Brooks Hall, Melbourne.

have occurred.(31) There should also be a clear line of responsibility through to senior management just where the ultimate legal responsibility rests for ensuring the health and safety of all employees.(32)

Interviews have indicated that generally management shows a lack of concern over unsafe working conditions. In the motor repair industry painters and panelbeaters too often are not supplied with masks, work attire is worn in a torn condition exposing the body to paint and chemicals, there is a lack of ventilation, and there is certainly no knowledge of Material Safety Data Sheets or proper chemical storage facilities. In the areas of banking and insurance, many workplaces have cramped office space, illumination needs to be addressed, and photocopiers are in amenities rooms. At the same time the Code of Practice for manual handling is not abided by, first aid boxes are locked, or in even removed, as is the case with Hazchem signs, there are no occupational health and safety representatives in some designated areas or in some instances management has appointed their own, and in so doing have not abided by the Act.(33)

31. *ibid.*

32. Department of Labour "Risk Management Manual for Local Government", June 1990, p.15.

33. The above interviewees numbered twenty-two, who were completing a unit entitled "Occupational Health and Safety" as part of the Advanced Certificate of Personnel at a TAFE College in Melbourne, May 1992.

From the above it can be seen that informal work practices do exist in a large number of industries, and as such serve to perpetuate unsafe conditions. The following chapter will explore this avenue in greater depth, and address the practices which are maintained in various sectors of industry, looking at contraventions by employers and employees alike, even though workers' health is at risk, and prosecution is an ever present possibility.

CHAPTER 5

INFORMAL WORK PRACTICES - MYTH OF THE CARELESS WORKER

"The hazards and risks that workers are exposed to are largely built into the workplace. Reliance on the careless worker theory - that most accidents at work are caused by careless workers - is unsatisfactory."

"VTHC Occupational Health and Safety Training Centre", 1986.

This chapter suggests that informal work practices serve to perpetuate unsafe working conditions within Victorian industries. Many employees and employers ignore correct safety procedures adopted by government agencies, companies and organisations, and as a result industrial accidents become more prevalent. This is contrary to the popular myth that industrial accidents result from careless workers, when both worker and employer are most often to blame for industrial accidents.

Informal Work Practices

The basic principles which form the trade union approach to occupational health and safety, as embodied in the A.C.T.U. Policy, are generally adhered to on construction sites. When entering such sites, safety is paramount, and the visitor is required to go through a rigorous procedure making sure that correct footwear, safety glasses and head protection is issued and worn. However, this procedure is all too often the reverse in other industrial settings. For example, at Containers Packaging and Melbourne Water there have been instances of sub-contractors verbally abusing supervisors and advising them that -

Only poofters wear hard hats and ear protection, and anyhow we don't have the time to worry about safety, as the job has to get done on time.(1)

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1. Interview with supervisors from Containers Packaging, Thornbury, and Melbourne Water, Brooklyn, February 1992.

Often sub-contractors only have to answer to their employer, who has commissioned them to complete a job within a specified time. Their employment contracts may only be viable from one job to another, and their wages set. More often than not, sub-contractors are left to start and complete a job by themselves, with their employer never visiting the worksite, let alone undertaking inspections during the work procedure. Sub-contractors working for wages, and self-employed contractors, believe that the time taken to rectify many workplace hazards would be too long, therefore not allowing time to complete the job at hand. A number of contractors were interviewed, and all came to a similar conclusion -

If there is a short cut to do a job
 I'm prepared to use it and if safety
 procedures are cut sometimes, that's
 too bad. The pressure to compete with
 others and get jobs finished on time
 with some profit shown is very great.
 If I worked under strong union principles
 of occupational health and safety, I would
 abide by the rules, but otherwise I don't
 have the time, and more often than not
 time is money.(2)

An interviewee, who is a supervisor of a work group involved with electronic printed circuit boards, reported that safety at times is difficult to maintain within her

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2. Interviews with ten contractors and sub-contractors from different trades, who did not wish to have their names or business organisations disclosed.

work group, for a number of reasons. First, as the drilling of components may only take a number of seconds, it is generally believed to be too time-consuming to go and get safety glasses then return to complete the drilling operation. Secondly, safety is often ignored when workers are pressured to work at a specific speed to maintain, or exceed, quotas. Finally, safety is pursued by the safety officer who views it as a number one priority, ahead of quality control, but on the other hand, management has a tendency to ignore safety standards, especially if it is of no direct concern to them. A number of employees interviewed believed that many senior management persons not involved in safety supervision would only complain of a hazard if it directly affected them, such as noise, airborne contaminants, fumes, slippery walkways, and so on.

Interviews conducted have shown that many workers fail to use extractor fans when soldering printed circuit boards at their workstations, believing that the fumes will dissipate quickly enough in the surrounding atmosphere. Workers who cut copper wires after soldering are constantly reminded to wear safety glasses, because of the danger of flying particles lodging in their eyes, with a typical response from female workers being -

Safety glasses are not feminine enough,
I've never had an accident or eye injury,
and I'm too busy to go and get them from
the cupboard.(3)

All those interviewed firmly believed that nothing would happen to them, and that they would be accident free. The pressuring of safety issues by leading hands on work groups they are responsible for, becomes a tireless campaign when employees disregard basic safety procedures because of a lackadaisical approach to work.

Following on from the above, storepersons receive regular Manual Handling Code of Practice training courses which result in participants having a full knowledge of all safety procedures in stores. Yet, many such people disregard the wearing of safety shoes, which are provided by the companies, and though safety glasses are worn on a more regular basis when handling dangerous materials, storepersons tend to wear protective clothing only rarely.(4)

The trade union approach to the above occupational health and safety issues would rely basically on the following problems. Unsatisfactory training and/or

3. Interviews conducted with storepersons and labourers at Ericsson Australia, Broadmeadows Plant, March 1992.

4. *ibid.*

supervision, safety rules and procedures not being adequately explained to workers in their own terminology or language, a belief that the work process and physical working conditions may need improvement and updating, safety equipment provided is unsuitable or uncomfortable, and workers do not have any autonomy or influence over the setting of their working conditions.(5)

Walsh says that from interviews with a number of trained child care workers at day care centres, it is evident that such workers are not adequately aware of the Occupational Health and Safety Act 1985, and Codes of Practice, particularly manual handling in this area. Viruses and colds seemed to be considered almost as important as back strain, yet the latter from lifting infants is one of the major hazards that child care workers suffer, and one of the most recurring of all injuries. Not all staff received training in manual handling, and even those who did had poor knowledge of lifting techniques and were not abiding by the Manual Handling Code of Practice. The centres approached had good names and high standards according to parents, and were all connected to educational institutions or councils. One staff member responded to a question regarding good safety standards and cleanliness by saying -

5. "Trade Union Approach to Occupational Health and Safety". VTHC Occupational Health and Safety Centre, 1986.

There are many centres that are not up to the standard of those selected in this survey, and what would the response from such centres have shown in reference to occupational health and safety.(6)

Council home care workers maintain that it is good to know about the Occupational Health and Safety Act, but it is difficult to implement it when dealing with elderly and handicapped people in their homes. The hazards encountered by home care workers within their normal daily duties, range from chemicals to electrical hazards, physical and health hazards. In order to carry out duties successfully, they have said that on occasions they have to work under stressful and unhealthy conditions, for the sake of their clients, or nothing gets done and the problems compound. The majority of these workers were reluctant to refuse their services to a client who was in need. At times the council's handy person may repair minor electrical and/or mechanical faults, remove moss on paths, walkways and drives, for a fee of around \$5.00 per hour. The hiring of a tradesperson for major maintenance and repairs usually goes by the wayside because of the expense involved. This situation then leaves home care workers to fend for themselves and their clients in the best possible way. They can make a council checklist of household dangers

6. Interview with Ms. H. Walsh, Health Care Worker, February 1992.

encountered, and at times an assessment officer becomes involved to point out further hazards, if they know them, none of which assists in remedying the real problems.

Homecare workers have mentioned that the home made chemical cleaners they come into contact with on a daily basis are very often a mixture of all name brands, with resultant burning to the skin and eyes when contact is made. They have further reported instances where acids and alkalis have been mixed together, for example toilet cleaners with detergents causing danger, and damage to household goods. The handling of household materials is very often a hazard, especially if floor surfaces are uneven, or carpet or lino is in need of repair. The results have been that homecare workers have often slipped or fallen when carrying loads. Then there is always the risk of infection and hepatitis from the likes of rusty objects and broken glass, and depending on location, mice and human waste. One worker, from an outer suburban council said -

I had been going to Mr. Jones' house for a period of six months on a weekly basis doing cleaning and other required tasks. Always, when leaving, Mr. Jones would present me with a packet of almonds, which I thanked him for, but after some time I said to him that the people I worked with thought that although he was very kind to constantly give us a gift, as he was an elderly pensioner, he should keep his almonds, or even not purchase them for us, allowing him to save his money. In reply Mr. Jones exclaimed 'it's alright my dear, tell your work friends I am only able to suck off the chocolate, as I don't have any teeth, and therefore I can't eat the almonds'!

In a number of small iron foundries surrounding Melbourne's central business district, furnaces are generally lined with fire bricks and other refractory materials to assist in the operation of withstanding the high temperatures generated. This process is basic in such foundries and as a result most have sand and dirt in the atmosphere and on the floors of the workplace. Cox and Rossiti, iron founders of Collingwood, are no exception to this process of operation. They employ around six persons who in their daily work wire brush castings to clean them after their removal from the furnaces. On many occasions the castings are ground with cylindrical hand grinders, or by pedestal grinding machines, which removes sharp edges or burrs from the product parts. On occasions, products ranging from bird baths to fire grates, grills, ornaments and garden fountains, etc., are also sand blasted and spray painted. From interviews and inspections, it appears that very many workers do not wear protective clothing and even often work in singlets as areas of the factory can, particularly near the furnaces, become very hot. The foundry's atmosphere is constantly filled with casting sand, employees are not wearing eye and breathing protectors when loading and unloading casting materials, and spray painting is carried out in open areas without face masks. On occasions noise is a problem, and exceeds the safe recommended level of 90 decibels - noise levels have been estimated at times to be 110 decibels, which is in the range where ear protection should be worn.

Workers eat their meals on the premises in the dirty atmospheric conditions. On sunny mornings, when light filters down the cracked ceiling, foundry residue can be seen floating in the atmosphere, all a part of the everyday working conditions of the foundry.

The Personnel Manager of Containers Pty. Ltd., Thornbury, reported that at one of their subsidiaries, St. Regis Bates Pty. Ltd., Reservoir, an employee sustained serious injuries when his hand was caught in an unguarded inrunning nip point of a paper sack-making machine. The company breached Section 21(1) and (2)(e) of the Occupational Health and Safety Act 1985 in not providing information, instruction, training and supervision, not guarding dangerous machinery or providing an emergency stop button.(7) A similar incident occurred at Marley Plastics Australia, when the employer failed to provide a safe working environment. An employee of Marley Plastics sustained an amputation of his finger above the first joint when struck by the blade of a guillotine he was operating. The company failed to provide information, instruction, training and supervision, and also absent were the guards on dangerous machinery. The above company received the

7. "Recent Prosecuting Occupational Health and Safety Legislation" Number 1/1992, Occupational Health and Safety Authority.

maximum penalty of \$40,000, an additional fine of \$8,000 plus \$750 costs, at the Oakleigh Magistrates' Court.(8)

The occupational health and safety representative at Niddrie Technical School reported that the principal ignored unsafe conditions in the plumbing/sheet metal, fitting and machining workshops - broken sheet panelling containing asbestos in workbays and on benchtops. He and other administrative staff refused to accept the danger of asbestos, and even asserted that asbestos was in fact not in the material which was clearly marked as such. The only way the school's representative rectified the incident was to threaten to write out a Provisional Improvement Notice (PIN), and call an inspector from the Department of Labour. The principal became concerned at this prospect, fearing that an inspector could find other breaches of the Act within his school.

According to the trade union theory of health and safety, the prevention of occupational injuries and disease is the major priority. Their belief is that this may be attained through employment of union occupational health and safety representatives, which in turn would result in the reduction of workplace hazards. Prevost indicates that many employers still hold the belief that any analysis of workplace accidents and

8. ibid.

subsequent recommendations for prevention, will always end up being too expensive.(9)

Recent prosecutions in the Magistrates Courts in Victoria, from January 1991 to March 1992, have numbered 112 breaches of the Occupational Health and Safety Act 1985 - in real terms, eight prosecutions per month from the cases reported to the Central Investigation Unit of the Occupational Health and Safety Authority.(10) A number of concerned employees and supervisors from various industries when interviewed stated that the Department of Labour and Industry's Occupational Health and Safety Division was only interested in prosecuting private employers, and too often ignored breaches of the Act, particularly in state government-owned instrumentalities and buildings.(11) The belief was expressed that it took a number of outcries from health and safety representatives to even entice inspectors onto state government premises. Many of the buildings and workshops are outdated compared with private industry, no doubt because it would cost the state

9. Interview with R. Prevost, Head Trainer, Occupational Health and Safety Unit, Trades Hall Council, March 1992.

10. Recent Prosecutions Occupational Health and Safety Legislation, op. cit.

11. Employers interviewed were from the manufacturing area and firmly believed that their workplaces were pressured under the O.H. & S. Act, more than government-owned instrumentalities, to rectify hazards, February 1991 to January 1992.

untold revenue to remedy the hazards that exist in their own backyard. This problem has slowly started to be rectified, with occupational health and safety representatives and unions pressuring the Department of Labour into visiting government-owned work sites on a more regular basis.

Lack of Awareness of Occupational Health and Safety Programmes

One hundred and fifty occupational health and safety representatives were interviewed from a variety of work-related industries, comprising manufacturing, education, public services (ambulance and fire brigade), trade related areas and process workers. They completed a pre-course exercise as an introduction to Level One Occupational Health and Safety Representatives Course at the Victorian Trades Hall Council Occupational Health and Safety Training Centre.(12) The exercise contained safety hazards, health hazards, examples of workers' carelessness, and management/union conflict relating to health and safety issues. (See Appendix 4 - Pre-course Exercise.) The safety hazards consisted of lighting, fire, machinery, hand tools, pressure vessels, traffic control, electricity, lifting and manual handling. The majority of representatives believed that the major hazards which caused the most concern at their respective workplaces were manual handling, electricity, hand tools

12. Pre-course exercises and interviews were conducted during June 1992.

hand tools, and machinery, believing that employees do not have sufficient, if any, training in such areas.

With regard to health hazards, representatives were asked to answer basic questions in relation to noise, chemicals, vibration, stress, dust, radiation, heat and coldness. It was the majority belief that noise, dust, chemicals and stress were the hidden health hazards in the workplace which could compound over time and eventually be irreversible. (See Appendix 6.) Those interviewed were asked about the effects of exposure to multiple hazards in the workplace. Many were unaware of the possible effects of being exposed simultaneously, or successively, to different physical, biological, chemical or psychological factors. (The effects of combined exposure to health hazards will be discussed later in this chapter.) On the subject of worker carelessness, sixty percent of answers place blame on workers for their own carelessness, particularly worker complacency, however, some did refer to unsatisfactory working conditions. It is interesting to note that representatives saw lack of regular training as the possible root cause of industrial injuries. A question relating to conflict of interests between unions and management over health and safety issues showed the anachronistic attitude that "management tends to wait a week, or month, before rectifying urgent hazards". Primarily, production is management's goal, and although in theory they will not compromise on safety, it has been known for supervisors to stray from correct procedures when deemed convenient in the name of production.

At times management is not interested in how safe a task is. They just want the job done as soon as possible, regardless.

I believe that management didn't really do enough to ensure a safe working place and I think the unions realise this.

If a workplace is to be healthy and safe it usually involves money being spent on hazards. Time and money for management is a major concern, and therefore they are reluctant to outlay expenditure on such workplace hazards.

Management puts money first, before they think of health and safety problems.

Sometimes employers skip safety precautions to cut costs.

Management will act on the part of occupational health and safety when it suits them, for mainly their own reasons.(13)

Representatives from schools believed some principals were willing to use the Act for their own gain to obtain facilities in the workplace which were not related to occupational health and safety issues, such as new shelter sheds, sporting equipment, and office furniture. On most occasions the occupational health and safety representative believed that these supposed occupational health and safety requests were invalid and had nothing to do with the intent of the Act, or their role as the workplace representative.

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13. Interviews conducted at the Trades Hall Council with occupational health and safety representatives attend a one week training programme, June 1992.

On the other hand, some interviewees reported harmonious conditions, and a reasonable attitude on the part of management, with the old belief of worker injury caused solely by carelessness being slowly eroded away, thus resulting in a more communicative workplace. The following answers show a different approach to the question of whether there is a conflict of interests between unions and management over health and safety issues.

As we (the company) wish to grow larger, management are trying in all areas to be more reasonable over health and safety issues.

Management are always willing to help with safety problems.

We (the employees/occupational health and safety representatives) have good communication with management, and as a result the company is very safety conscious. Management attend all occupational health and safety meetings.

Being a health and safety representative at a school is sometimes like walking a tightrope, that is, to be able to distinguish between safety issues that need to be repaired and those that students or principals want to be replaced. Otherwise, most of the time safety issues usually work themselves out satisfactorily.

The principal and representatives are more willing to listen to reason and reach an amicable solution on health and safety issues, especially after the threat of a number of Provisional Improvement Notices (PIN).

In some cases there has been conflict over health and safety issues, but nowadays management and representatives normally want to fix up any problems, e.g. so management doesn't have to pay out on Workcare.

Four occupational health nurses were interviewed, all of whom were working, or had worked, in the automotive industry. The most common industrial accidents occurring in that field stem from manual handling. Even though gloves are issued, they are of poor quality and sharp objects pierce or tear the inside of the pads. Eye injuries were also reported as a major concern, particularly from spot welding machines. Interviewees stated that even though safety welding glasses were provided, they were similar to the safety gloves, being of poor quality.

Eye injuries were extremely common and consisted mainly of burns from spot welding. Glasses were provided, but again were inadequate for the risk involved.(14)

Moreover, it was reported that in some cases workers were returned to their original work not completely rehabilitated, many with eyepads in place, and despite regular spot welding arc flashes, little safety information was available. What was available was usually printed in English, despite the fact that an extremely high proportion of employees were non-English speaking and reading.(15) It was also mentioned that

14. Interviewee is an Occupational Health Nurse working for a major motor vehicle manufacturer in the northern suburbs of Melbourne. Interview conducted at Red Cross, South Melbourne, 1992.

15. *ibid.*

there was a general disinterest in safety and safety training programmes at both management and staff levels. Management viewed this as a waste of time and money, and it is believed staff may have been more receptive to safety training if they had been given a rationale. Major health hazards were in the areas of vehicle build-up, spot welding and spray painting, which resulted in lacerations, eye injuries and exposure to toxic fumes.

Body building areas involved handling of metal panels and resulted in a large number of lacerations. Spot weld areas resulted in a high number of eye injuries and burns to hands. Spray painting booths were the scene of numerous collapses into unconsciousness due to the lack of proper respiratory protection devices. Often staff were only given paper disposable face filters (as used in hospitals) in areas with toxic fumes.(16)

When the interviewee was asked the question "were any cost benefit studies undertaken towards occupational health and safety?"(17) the reply was that evidence of any changes could only be found by observing previous attendances of any long-term employees who the occupational nurse had treated and "according to my observations, the accident and illness rate appeared to be fairly constant over a ten year period". Accidents were monitored by the nursing staff in the medical centre

16. *ibid.*

17. See Appendix 5 - Occupational Health and Safety Questionnaire.

after the completion of each shift, and a statistical sheet recorded attendance of staff, the department in which an injury had occurred, the type of injury and body part injured, and referral. The accident report sheets were "simply filed, and no action was taken". Following a number of minor accidents occurring, the interviewee wanted to call in an inspector from the Department of Labour, to see if some rectification of accident occurrence could be achieved, however the reaction was to threaten physical assault should this line be pursued.(18) From all accounts this did not come as a complete surprise, as the company in question had little regard for industrial safety, and employee motivation towards their daily work programme was extremely low, and absenteeism high.

Employees showed no enthusiasm in their work and absenteeism was high. Many people attended the medical centre looking for an excuse to go home.(19)

Most employees regarded their positions as just a job, and showed no pride in their work or company.(20)

When the interviewee was asked if there was a change in attitude after the Occupational Health and Safety Act came into practice, the response was -

18. The interviewee in question did not want this conversation to be recorded in any form in case some reprisals were to result.
Interview conducted August 1992.

19. *ibid.*

20. *ibid.*

Not that I know of, however, when I was interviewed for my position as an Occupational Health Nurse the Personnel Office (Safety) did not know what a "Code of Practice" was, when I mentioned it.(21)

A similar situation to the above has occurred at V-Line, with the interviewee in this case being a foreperson in the electrical maintenance field. Management showed a disinterest in safety programmes, although this was not the case with employees. At times many unqualified persons were working on sophisticated electrical mechanical equipment which resulted in serious accidents occurring. A large proportion of the older equipment was reported as unsafe, unserviceable, and the likes of cranes and walkways were in total contravention of safety regulations.(22)

There appears to be a distinct disinterest in safety and training programmes from second-line management who hold the responsibility for production. A senior occupational nurse, employed at a large manufacturing company in a northern suburb of Melbourne from 1978 to 1988, reported that second line management viewed safety issues and training as a waste of time.

21. *ibid.*

22. Interview with J. Katsirubas, ex. V-Line Foreperson (Electrical), February 1992.

Non-English speaking employees were given safety advice in their own language via an interpreter.(23) One factor which contributed to injuries in the workplace was management's complacent attitude to work practice. They viewed safety and safety-related issues from a cost point of view.(24) However, from a more positive viewpoint, safety committee meetings were held on a regular basis, the procedure reportedly having begun during 1978, seven years prior to the Victorian Act making safety committees compulsory.(25) The situation regarding chemical usage left a lot to be desired as for instance Material Safety Data Sheets were never issued and migrant workers were left not knowing what they were doing when handling chemicals. "I believe this situation with migrants would have arisen from a lack of communication, and an inadequate knowledge of written and spoken English". On the other hand, information was freely given regarding machinery.(26) The interviewee observed that prior to the Occupational Health and Safety Act 1985 there appeared to be more safety and health related injuries.

23. Interview with Senior Occupational Health Nurse, Red Cross, South Melbourne, August 1992.

24. *ibid.*

25. The interviewee reported that even though safety meetings were held every two months, the process to remedy hazards was slow moving. Also, management was usually represented on the committee, at times making workers feel intimidated.

26. *ibid.*

However, WorkCare claims rose considerably after the 1985 Act was introduced.

After the Occupational Health and Safety Act 1985 had been introduced there was a noticeable improvement in physical working injuries. However, Workcare claims rose to an all time high. I believe that this was due to the clause - "non-proof of injury".(27)

As stated previously in this chapter, many workers are exposed simultaneously or successively to different chemical, biological, physical and psychosocial factors in their daily work environment. Foundry workers can be simultaneously exposed to heat stress, noise, carbon monoxide, vibration, metal fumes and respiratory irritants; similarly in welding to metal fumes, noise unnatural postures and other substances (28) In the building industry exposure is to dust, noise, heat, cold, vibration, fumes and chemicals.

Workers themselves need to act collectively through their health and safety representatives, safety committees, and unions, to ensure that their health and safety in the workplace is protected.

27. The interviewee advised that she was mainly referring to the period 1985-6.

28. Report: World Health Organisation, "Health Effects of Combined Exposure in the Work Environment", Geneva, 1981.

Mathews observes regarding workers health and safety -

Their protection is a social question; it concerns the conditions in which they are offered employment and are expected to work. It is an issue that must be seen within the context of the relations between employers and their employees, and of the legal framework that structures these relations.(29)

The myth of the careless worker is subscribed to by union and non-union workers as much as by employers, and as long as it remains unchallenged, workers progress to secure better conditions to protect their health and safety will be slow. Management has suggested that workers are ignorant and careless, malingering and even accident-prone, and have subjected themselves to injury. This notion assists management to divert blame from themselves, their organisational structure and the industrial sources of injury, and is certainly not counter-balanced by the fact that many workers have made sacrifices in occupational health and safety in order to complete the job on time. Mathews says that while workers hold to the concept of the careless worker theory, they see the role of the law and their unions as imposing further discipline to make them work safely.(30) They so often reject the notion of safety, as it is

29. Mathews, J., Health and Safety at Work, Sydney, Pluto Press, 1987, p.2.

30. *ibid*, p.10.

associated with extra discipline and more meaningless procedures, though Mathews believes this attitude changes when workers realise that accidents are actually programmed into the design engineering of a machine or plant equipment. From then on it becomes clear that the standard of safety built into equipment is the subject of negotiation, and as such new rules are set in such negotiation with unions and employers.(31)

Sociologists, according to Quinlan and Bohle, have made a number of general observations regarding our current understanding of occupational injuries, one of which is the popular explanation, broadly categorised as blaming the victim rather than the system.(32) Explanations blaming the worker suggest that preventative strategies should focus on the behaviour of individual workers, for example behaviour modification and training, whilst explanation blaming the system imply a need for organisational and technical changes. Quinlan and Bohle believe that in many cases it is clearly unreasonable to attribute responsibility for injury to the workers involved.(33)

31. *ibid*, pp.10-11.

32. Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, Sydney, Macmillan, 1991, pp.100-101.

33. *ibid*, p.101.

On many an occasion in the workplace employees are instructed by management or their representative to complete a particular task, with the worker not having sufficient knowledge of the dangers involved. So often the end result can be serious injury, or even death, with management and workers alike dismissing the situation as carelessness on the worker's part. It is an unfortunate situation that workers who suffer injuries are very often placed in the category of name calling such as, accident-prone, malingerer, careless, ignorant and bludger, to list but a few. There are also those injuries which carry with them societal prejudices with terms such as Mediterranean Back, referring to Greeks and Italians with back problems, and WorkCare Grabber, referring to Turks and Lebanese. These terms have always been used as accusations that no injuries have in fact existed, even though many immigrant workers have undertaken heavy manual work and been subject to a high incidence of back strain.(34)

Workers are always exposed to a broad spectrum of injury incidences having a direct bearing on their specific occupations, such as age, skill level, holding employment, the bonus factor, quotas of work required to be completed, speed of task completion, supervisory

34. Quinlan and Bohle cite a number of similar examples in Chapter 3 of "Explaining Occupational Injury" in Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, op. cit., pp.92ff.

pressure, and the work environment. This list is by no means complete, as with the impact of new technology on organisations and jobs, workers will very often be faced with the prospect of not having sufficient knowledge to carry out the job at hand in a safe manner. Causational factors of injury could include industrial, organisational, technical and human error components. This process may vary from workplace to workplace, being very complex and involving an integrated social process which stems from the competing interests of management on the one hand and workers on the other. Management will always want the job completed as quickly and efficiently as possible, thinking from the point of view that profits will be quick and high, whereas from the other side, particularly in today's working climate, workers need full employment and in such circumstances very often feel threatened.

Sociologists have recently made tremendous inroads into and contributions towards the understanding of occupational injuries. They have focused attention on the individual worker, behaviour, and management's lack of understanding of work processes. They have also developed an alternative model, with emphasis on the structural characteristics of workplace injury causation, and the social processes flowing from the competing interests already mentioned.(35) Dwyer, a sociologist,

35. *ibid*, pp.110-11.

developed a model to explain the variations in the incidence of industrial accidents in different workplaces. He concluded that the accident rate in a given workplace is as much closely associated to the state of functioning of social relations on the organisational, command and rewards levels, as it is to the individual member level of influence.(36)

...Industrial accident rates are higher on day shift than on night shifts. The key variable is the lessening of supervisory pressures on the night shift.(37)

A regular shift worker with the Met, who is also a practising first aid certificate holder, stated that afternoon shift has considerably less injuries than day shift, a fact which could be contributed to less pressure from supervisors to complete tasks, with the subsequent feeling by workers or not being threatened if a job is not completed during that shift. It was observed that on most occasions supervisors appear to be easier going on afternoon shift, and more willing to assist with the job being done.(38)

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36. Dwyer, T., "A New Concept of the Production of Industrial Accidents: A Sociological Approach", New Zealand Journal of Industrial Relations Vol.8, 1983, pp.147-60.
37. Aungles, S.B., and Parker, S.R., Work Organisations and Change: Themes and Perspectives in Australia (2nd ed.), Sydney, Allen and Unwin, 1992, p.34.
38. Interview with L. Burns, Diesel Maintainer and shift worker with The Met, July 1992.

All evidence taken into consideration it is fair to suggest that workers are not solely to blame for industrial accidents. Management is also at fault, at times displaying complacent and belligerent attitudes at the workplace towards safety, even though there are strict guidelines in place in Victoria relating to occupational health and safety.

The following chapter will explore the attitudes of the Commonwealth, states and territories in relation to their safety legislation, with particular emphasis on Victoria and the Robens Report from the United Kingdom.

CHAPTER 6

LEGISLATION AND HISTORY

Provisional Improvement Notices.

33.(1) Where a health and safety representative is of the opinion that any person -

- (a) is contravening any provision of this Act or the Regulations; or
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue to be repeated -
- the health and safety representative may issue to the person a provisional improvement notice requiring the person to remedy the contravention.....or likely contravention.

Occupational Health and Safety Act 1985, No.10190, Victoria, p.19.

This chapter examines the development of the statutory provisions in the United Kingdom which culminated in the Health and Safety at Work Act 1974, and the philosophy behind it, which generated health and safety legislation in Australia, and particularly Victoria. By following the British model Victoria has developed strict guidelines in attempting to protect the worker and promote occupational health and safety in all industries, the end result being the Occupational Health and safety Act 1985.

The concept of worker appointed safety representatives is not entirely new. In both Britain and Australia during the late 19th century it was believed that workers should be appointed as members of independent public inspectorates although such proposals did not meet with great success, particularly, according to Creighton, as they differed from the old idea that safety representatives should remain at their place of work and be directly answerable to those who employed them.(1) The British Coal Mines Regulation Act 1872 conferred the right to appoint safety representatives upon employees in coal mines, and New South Wales enacted similar provisions in 1896, which was highly exceptional at that time. South Australia followed in 1920, with Western Australia in 1946 and Queensland in 1964, but it has not

1. Creighton, W.B., "Statutory Safety Representatives and Safety Committees: Legal and Industrial Relations Implications", in The Journal of Industrial Relations, September 1982.

been until recently that such issues have assumed any general significance.(2)

All the development in Australia in occupational health and safety have been directly influenced by the philosophy contained in the report of the Committee on Safety and Health at Work 1970-72, referred to as the Robens Report, and its principal recommendations the U.K. Health and Safety At Work Act 1974. In both Britain and Australia the incidence of occupational injury and death has been unacceptably high. Both countries tried to address the problem by laying down minimum safety standards in statutes or regulations, and making provision for their enforcement through the avenues of independent inspectorates. This course has not proved successful in either country, not because the idea of laying down safety standards in itself is defective, says Creighton, but it would never be the complete answer to the problem, although in principle the rigorous enforcement of appropriate statutory standards could play a supporting role in assisting to avoid such serious injuries and deaths in the workplace.(3) It is a fact that whatever safety standard has been laid down in the past, it has never been completely appropriate to all, but especially the persons meant to be protected, the workers.

2. ibid, p.338.

3. ibid, p.339.

By 1970 there were nine statutes which sought to promote health and safety amongst the various segments of the working populous in Britain, with the responsibility for administering these laws being diffused between five government departments and seven separate inspectorates.(4) Against this appalling background in health and safety, in May 1970, in an attempt to rectify the situation with regard to industrial injuries and deaths, the British government appointed a Committee of Inquiry on Safety and Health at Work to review the spectrum of health and safety legislation and to recommend changes in the law and its implementation. The committee, chaired by Lord Robens, was commonly known as the Robens Committee.

The Robens Report, was presented to parliament in 1971, making a number of fundamental recommendations.(5) First, it noted that the traditional approach based on increasingly detailed statutory regulation was outdated, over-complex and inadequate. It recommended that reform be directed at creating the conditions for more effective self regulation by employers and employees jointly. Secondly, the efforts of industry and commerce to

4. Australian Government Publishing Service,
Legislation at Work: Safety and Health,
Canberra, 1981, p.25.

5. *ibid*, pp.25-8.

tackle their own safety and health problems were to be encouraged, supported by up to date provisions unified within a single comprehensive framework of legislation. Thirdly, a single centre of initiative was required to replace the then heavily fragmented administrative arrangements.(6)

* { The above recommendations formed the major foundation for the Health and Safety At Work Act 1974, which in fact was introduced in three separate stages between July 1974 and April 1975. The Act consolidated the existing safety legislation, and established the Health and Safety Commission, vesting in it the power to preside over accident investigations and similar matters with a view to making regulations and approving codes of practice for the purpose of providing practical guidance with respect to specific statutory provisions. The Health and Safety Executive was established to exercise administrative functions on behalf of the commission, under its general control.(7)

Employers were to provide all employees with a safe and healthy workplace and work process, while employees were to take reasonable care for the health and safety of themselves and others while performing their duties.

6. Robins Report, cited in Legislation at Work: Safety and Health, op. cit., p.28.

7. ibid., p.28.

The Act provided for the establishing of health and safety regulations, and for the preparation and approval of codes of practice.(8) With regard to the appointment of safety representatives, the unions concerned were to decide who should be appointed, and the numbers to be involved. The Code of Practice however does mention joint discussion to be held between employers and unions.(9)

The laws in Australia relating to occupational health and safety fall into two categories, the first being the law relating to the prevention of industrial injuries and diseases, and the second involving compensation of people who have suffered industrial injuries or contracted industrial diseases. Occupational Health and Safety has traditionally been regarded as an area of State legislative responsibility, in that Commonwealth legislative powers are limited by the Australian Constitution which specifies that there are a number of areas of Commonwealth jurisdiction, leaving all other areas to the legislative powers of the States.(10)

8. Doran, J., "Implementing the Victorian Government's Policy on Occupational Health and Safety - 1982-1984" in W.B. Creighton and N. Gunningham (ed.) The Industrial Relations of Occupational Health and Safety, Sydney, Croom Helm, 1985, p.140.

9. Creighton, W.B., op. cit., p.343.

10. Brooks, A., "Federal Legislation: A Two-stage Strategy for Development", in Guidebook to Australian Occupational Health and Safety Laws (3rd ed.), North Ryde, CCH Australia Ltd., 1988, p.701.

The Commonwealth Government's jurisdiction in occupational safety and health is, broadly speaking, limited to its own employees, its territories and perhaps through the medium of Federal awards. Indeed, practice to date has acknowledged the primary role of State Governments in this area.(11)

However, this need not be the case, for if the Commonwealth Government was so minded it could pursue occupational health and safety with the use of trade and commerce, corporations, external affairs and incidental powers as a basis of occupational health and safety legislation. Still, there has been no inclination to do so, with the consequence that those employers who carry out their business in more than one State, or from State to Territory, still have to contend with up to eight different bodies of Occupational Health and Safety legislation.(12)

Commonwealth of Australia

Under Australia's Constitution the Commonwealth Government has never attempted to intervene directly in enforcing or enacting standards to protect the health and

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11. The Hon. F.J. Darling, M.L.C.: 'Commentaries', in Health and Safety at Work: A Review of Current Issues, North Ryde, CCH Australia Ltd., 1980, p.21.
 12. W.B. Creighton: Understanding Occupational Health and Safety Law in Victoria, North Ryde, CCH Australia Ltd., 1986, p.3.

safety of Australia's workers. Instead it has been left to the different States to control their own situation, which has therefore resulted in one of the worst possible systems of protection to that of any comparable country.(13) As mentioned the Commonwealth's legislative powers are restricted, and occupational health and safety does not fall within the realms of power given it.(14) However, there are some exceptions where the Commonwealth has passed Acts and Regulations, contained in Section 51 of the Constitution relating to trade and commerce with other countries and among the States; lighthouses, lightships, beacons and buoys; quarantine; fisheries in Australian waters beyond territories limits; and Conciliation and Arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one state.(15)

Section 98 of the Constitution is also relevant:

The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping and to railways the property of any State.(16)

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13. J. Mathews: Health and Safety at Work, New South Wales, Pluto Press, 1985, p.30.
 14. A. Brooks: Guidebook to Australian Occupational Health and Safety Laws (3rd ed.), North Ryde, CCH Australia Ltd., 1988, p.307.
 15. Constitutional Commission 1988: The Constitution of the Commonwealth of Australia, Canberra, Australian Government Publishing Service, 1988.
 16. *ibid.*
See also Brooks, A., op. cit., p.308.

The outstanding areas of Commonwealth jurisdiction with regard to occupational health and safety are navigation by air and sea, the public service of the Commonwealth, Commonwealth Territories, and territorial and international waters such as light-ships, off shore oil rigs and the like. The Commonwealth has enacted Acts and Regulations affecting most of these areas.(17) The Commonwealth has the power to legislate on occupational health and safety matters in the external territories of Norfolk Island, Christmas Island and the Cocos and Keelung Islands. However, the most important legislation in relation to the Commonwealth is the Australian Capital Territory, which will be examined later in this chapter.(18) Brooks views the diverse array of Commonwealth legislative powers, coupled with its defence of States' rights, as meaning that Commonwealth legislation will always, or at least for the foreseeable future, have this "rag-bag" appearance.(19)

As previously mentioned the proliferation of companies operating from State to State or Territory becomes a major problem of conforming to standards. Chemicals and solvents, and manual handling are just two of the many issues which differ between States.

17. Constitutional Commission 1988, op. cit., pp.308-9.

18. *ibid*, p.331.

19. *Ibid*, p.331.

An example of such differences is the permissible weight one is allowed to handle - for example, an employee would not be allowed to unload a container without some mechanical aid in Victoria, while they are permitted to do so in Western Australia and Queensland.(20) An argument exists for Commonwealth control of all occupational health and safety legislation, without which workers will continually contravene each State's legislation, with the result that industry could suffer. Although the different state laws share a number of main features, there are considerable differences between them, as will be discussed later.

Prior to 1983 the Commonwealth had done little with respect to occupational health and safety. The Labor Government, on coming to power at this stage, made a commitment to rectify the problem and to foster and develop occupational health and safety. This commitment was encompassed in the Accord(21), an agreement signed between the Australian Council of Trade Unions (ACTU) and the Australian Labor Party (ALP). Referring to occupational health and safety, the accord mentions -

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20. Interview with R. Prevost, Head Trainer, Victorian Trades Hall Council, Occupational Health and Safety Unit Training Centre, January 1989.
(See also Brooks, op.cit., for similar examples on States' restrictions, pp.331-2.)
21. National Economic Summit conference, April 1983.
The Accord was an agreement between the ACTU and ALP on joint economic policies and strategies for Australia. Summit participants came from trade unions, business and professional organisations, Commonwealth and State governments, and interested bodies from the community.

The two parties agree that priority should be given by an incoming Labor Government to establish a framework through which unions and union-appointed health and safety representatives in places of Commonwealth Government employment may be involved in jointly monitoring and controlling workplace hazards with management. This framework will include the setting up of joint union-management health and safety committees in places of Commonwealth Government employment in which workers' health and safety representatives will have the rights:

- . to inspect the workplace at any reasonable time;
- . to receive health and safety information from the employer and the (National Health and Safety) office;
- . to represent workers in safety disputes...
- . to require that management establish a health and safety committee.(22)

As a direct result of the above policy, a tripartite National Occupational Health and Safety Commission (Worksafe Australia) was established in October 1984, from a report by the Interim National Occupational Health and Safety Commission (NOHSC). The Report identified the following criteria. The need for a tripartite approach to occupational health and safety, and employer and employee organisations to be able to participate fully in the development and implementation of a national occupational health and safety strategy.(23) The Interim Commission identified four main elements of a national

22. Cited in Mathews, op. cit., p.15.

23. Interim National Occupational Health and Safety Commission: Report, Canberra, May 1984.

occupational health and safety strategy as being prevention, equity, participation, and responsibility.

The objectives of Worksafe Australia are, first to develop an awareness in the community of occupational health and safety issues, secondly to provide a national forum where all parties can consult and debate occupational health and safety matters, and thirdly to provide a national focus for activities relating to occupational health and safety.(24)

A report published on behalf of the Minister for Employment and Industrial Relations, Mr. Ralph Willis, two years after the Accord had been in operation, mentions -

Australia is paying \$6.5 Billion annually because of unsafe work practices, this cost falls on the Australian taxpayers as workers are personally affected, their families and industry as a whole. The Accord strategy is to improve standards of health and safety in the workplace, via the establishment of the NOHSC, which has been in operation since October 1984.

The NOHSC will develop national standards and priorities; upgrade research and training; and provide a basis for unions and employers to work together.(25)

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24. ACTU, "Health and Safety a National Strategy", in The Bulletin, Melbourne, November, 1986. Grants from Worksafe Australia have enabled the ACTU to establish the National Occupational Health and Safety unit to co-ordinate ACTU activity on health and safety strategy.
25. R. Willis, M.P., Accord: The First 2 Years, Canberra, p.27.

Prior to the federal Labor government's election in 1983, the Liberal/National government had ignored a number of recommendations received for the upgrading of federal initiatives in the areas of occupational health and safety, especially research, departmental advice and the setting of standards. In an attempt to cut expenditure the government had stopped spending on the existing infrastructure, abolished the National Committee on Occupational Health and Safety in Government Employment, and staff levels in the areas dealing specifically with toxicology, radiation standards, preventative medicine, environmental health and epidemiology.(26) However, come 1983 this situation was soon to be rectified, and since then Worksafe Australia has accelerated its research promotion in occupational health and safety via funding from external grants, and through its own Research and Scientific Division. This division is organised into eight disciplinary groups, namely ergonomics, toxicology, work environment, occupational medicine, epidemiology, safety engineering, occupational hygiene and psychology, and statistics.(27)

Until recently Australian Government employees have never had any statutory health and safety protection,

26. Quinlan, M. and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, South Melbourne, Macmillan, 1991, pp.226-7

27. *ibid*, p.228.

although a start was made by the Whitlam Labor government in 1972 with a Committee on Occupational Health and Safety in Commonwealth Government Employment being established. A general Code of Principles was to be developed, as were specific codes, but these did not reach fruition, with the whole process being halted under the Fraser governments of 1975-1982.(28)

As a result of recommendations of the 1984 interim National Occupational Health and Safety Commission that the federal government should enact its own legislation to protect the health and safety of employees working in Australian government workplaces, legislation was finally introduced in 1991. The Occupational Health and Safety (Commonwealth Employment) Act 1991 provides a legal basis for the protection of the health and safety of all Commonwealth employees in departments, and government business enterprises and authorities.(29) This Act authorises the appointment of a health and safety representative and a deputy, both of whom must be members of the same work group (Sections 25 and 33). Health and safety representatives are required to be familiar with the health and safety policy and agreements of their particular agency. Their role, under Section 28, is to promote the health and safety of employees in a designated work group, and in such a position the

28. Mathews, J., op. cit., p.32.

29. Occupational Health and Safety (Commonwealth Employment) Act 1991.

representative may inspect the whole or any part of that workplace, accompany an investigator during an investigation of the workplace, have paid time off work to attend a recognised training programme, attend an interview between the employee and the investigator with the consent of the employee, examine records of a health and safety committee, represent the work group in consultations with the employer concerning the health and safety of employees, be assisted by a consultant, and issue a provisional improvement notice in accordance with Section 29 of the Act, which entitles a representative to initiate procedures to protect the health and safety of members of a designated work group. If a Provisional Improvement Notice (PIN) is issued as a result of a contravention of the Act, after the representative considers no suitable agreement has been reached with the employer, the employees then have the right, within seven days, to request an investigator to conduct an investigation of the matter in dispute.(30) When a representative believes that a threat to health and safety is present an employee may be directed to cease work immediately. An investigator must be notified as soon as practicable, and shall make the decisions considered necessary. If the investigator believes that stop work was warranted a prohibition notice (PN)

30. *ibid.*

(See also "Health and Safety Representatives Handbook", Comcare Quality Service, 1992.

may then be issued, specifying the nature of the contravention, the action required and the time span within which the fault is to be remedied.

The Commonwealth Act is a direct model of the Victorian Occupational Health and Safety Act 1985, except that the Victorian Act does not have provision for the appointment of a deputy health and safety representative. The Victorian Act will be examined in detail later in this chapter.

The Northern Territory of Australia

The Work Health Act of the Northern Territory was assented to on 16 December, 1986. This Act provides both for workers' compensation and the prevention of disease and industrial injuries.(31) The Northern Territory Work Health authority is not organised along tripartite lines as in Victoria, but is constituted solely by a Chief Executive Officer, appointed by the Minister. This authority has the jurisdiction to engage consultants, and may make arrangements to be provided with advice as it deems fit. The functions of the Authority are set out in Section 10, paragraphs (a) to (k) of the Work Health Act and specifically related

31. Brooks, "Northern Territory Legislation", op. cit. p.665.

to occupational health and safety matters.(32) The Minister is to be advised on matters relating to occupational health and safety policy in the Territory and to develop, publish and recommend occupational health and safety standards, to encourage employers and workers, to consult about work practices, and to identify priorities and needs in occupational health and safety.

Further, it promotes a co-ordinated and integrated approach by government authorities to inspection responsibilities in occupational health and safety, to advise and assist employers and workers on occupational health and safety matters in the performance of their duties, and where the Minister so directs, carry out investigations at the workplace to liaise with and, where required by the Minister, represent the Territory at meetings and in communication with Commonwealth and State occupational health and safety authorities. The Authority is also able to prosecute persons for offences against the Act, and carry out inspectional functions by appointed persons, but unlike other industrial safety legislation, the Work Health Act does not give direct authority of investigation to the work health officers. These powers arise by delegation from the Authority.(33)

32. *ibid*, p.666.
See also Work Health Act, Northern Territory, 1986, Section 10.

33. *ibid*, p.667.

Improvement and prohibition notices are imposed where the Authority believes the Act is being contravened, or has been contravened. It may issue an improvement notice to be complied with in seven days, or pay a punishable fine of \$10,000 in the case of corporation, or \$2,000 or six months' imprisonment in the case of an individual person. Where the Authority believes that there is an immediate risk to health and safety, it will issue a prohibition notice. Failure of compliance carries a \$15,000 fine for corporations and \$3,000 or six months' imprisonment for an individual. There are avenues for appeal by employers to the abovementioned notices, in writing, within seven days of issue. (Section 43.) Prohibition notices continue to operate until a hearing, but an improvement notice is suspended until an appeal has been decided upon.(34)

Section 29 of the above Act imposes obligations of care on employers and the principal of independent contractors. This definition is designed for workers' compensation purposes of the Act only. Section 3(1) refers to a worker as -

One who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person.(35)

34. *ibid*, p.668.

35. *ibid*, p.668.
See also Work Health Act, op. cit.

The employer must provide safe plant and systems, make arrangements for safe handling and storage, and provide all necessary instructions and information etc. This is identical to the Victorian Act, except that the latter requires adequate facilities for the welfare of employees. Both Acts, the Northern Territory and Victoria, require employers to monitor the health of their employees, and the workplace conditions.

Brooks sees the general duties of the Northern Territory as being "surprisingly progressive", and in it sees much that is similar to the 1983 Victorian Bill, which the Liberal Opposition members characterised as -

nothing more or less than an attempt at a massive transfer of industrial and commercial control of the workplace to the trade union movement. It is undoubtedly a major thrust by the Socialist Left with the Australian Labor Party to justify its philosophical existence and to bring about its long term goal of democratic socialisation of the workplace. It is no exaggeration to say that...it will legislatively entrench industrial thuggery in the statute book.(36)

The comments of the Leader of the Opposition, Mr. Kennett, were mainly directed to the provisions relating

36. Brooks, A., "Legislation", op. cit., p.672.
See also Victorian Parliamentary Debates,
Legislative Assembly, 49th Parliament, First
Session, 29 February 1984, p.2832, per
Mr. J. Kennett, Leader of the Opposition.

to health and safety representatives, though the general duties were framed by the same government that wanted, according to him, to entrench industrial thuggery via the method of a democratic system.(37)

New South Wales

The Occupational Health and Safety Act 1983 of New South Wales follows a similar direction to that of the British Act of 1974 - Health and Safety at Work. It has had a profound effect on the responsibilities of employers, occupiers of premises, manufacturers and suppliers of plant and substances, together with persons engaged in certain contracting work. The Act applies to all persons who perform work either as an employee or self-employed.(38)

Prior to the Occupational Health and Safety Act 1983, the New South Wales Government set up a Commission of Inquiry in occupational health and safety. The Commissioner, T. G. Williams, was a former Industrial Magistrate, and the Commission, an ad hoc creation, was given wide-ranging terms of reference as follows:-

37. *ibid*, p.672.

38. Occupational Health and Safety Act 1983, No.20, New South Wales.

To enquire into, report upon and make recommendations relating to.....laws governing occupational health and safety and industrial safety in respect of all persons employed, including self-employed in New South Wales and the administration of such laws.

To enquire into and report.....legislation pertaining to the relationship between work, health, safety and welfare.

To enquire into the functioning and adequacy of present systems and to recommend such changes as are required to ensure that all employed persons are not only protected from work-induced diseases or injury but also have access to positive health promotions.

To enquire into the present relevant Acts and Regulations with the objective of decreasing the complexities of the system and increasing the effectiveness of the system.(39)

The Williams Report dealt with twenty-five main topics relating to the Inquiry. Prior to this, however, Williams took an introductory overview of occupational health and safety and noted that industrial accidents and occupationally related ill-health should be treated together not separately, as the existing legislation had been inadequate in preventing ill-health and industrial accidents.(40) Commissioner Williams' criticisms of the industrial safety and health legislation are similar to the Robens Report.

39. Brooks, A., "N.S.W.: The Williams' Report", op.cit., p.334.

40. Brooks, op. cit., pp.334-5.

Williams also endorsed the view of the joint International Labor Organisation (I.L.O.) and the World Health Organisation (W.H.O.) Committee on Health and Safety. Williams further recommended new unified legislation and that especial care should be taken in order that minimum standards are not cut down, and in so doing quoted statements and objectives of the Danish Working Environment Act, the British Health and Safety at Work, Act as very good examples, and also considered that the preamble to the U.S.A. Occupational Health and Safety Act should be referred to.(41)

As with other States Occupational Health And Safety Acts, the New South Wales Occupational Health and Safety Act was designed to replace older legislation, and was designed to operate at the present, alongside existing industrial safety legislation. This Act follows in the footsteps of the Robens philosophy by stating -

5. (1) The objects of this Act are -

- (a) to secure the health, safety and welfare of persons at work;
- (b) to protect persons at a place of work (other than persons at work) against risks to health or safety arising out of the activities of persons at work.(42)

41. *ibid*, pp.336-7.

42. Occupational Health and Safety Act 1983, No.20, New South Wales.

The New South Wales Act is directed at safety and health at work initially, rather than safety and health in specific types of workplaces, or in relation to specific substances. Section 23(1) provides for the establishment of an Occupational Health and Safety Committee at the particular workplace where there are twenty or more persons employed and that the majority of them request the establishment of a committee, and the Occupational Health Safety and Rehabilitation Council of New South Wales directs the establishment of such a committee at the place of work.(43) The members of this joint committee are to be elected by the employees and the employers of the workplace, while the chairperson is to be appointed by the committee members. Failure to abide by the above attracts a fine of \$5,500.

Regarding the establishment of employee participation in the regulation of industrial health and safety, Brooks states that some of the strongest criticisms have been levelled at the recommendations of the Williams Report.

43. *ibid.*

See also Mathews, *op. cit.*, pp.533-4 for committee establishments; and B. Creighton: 'The Occupational Health and Safety Act 1983 (N.S.W.) and Industrial Relations', in B. Creighton and N. Gunningham (eds.) The Industrial Relations of Occupational Health and Safety, Sydney, Croom Helm, 1985, p.105.

...and it was in relation to the provision for such participation that the most vociferous criticism of the new legislation could have been expected.(44)

The participation mentioned is the involvement of the joint labour/management safety committee. While management is dubious the union movement accepts and supports the idea of such committees. Roy Prevost, Head Trainer of the VTHC, Occupational Health and Safety Training Centre states -

Many unionists have complained about the initial development of a joint management/labour health and safety committee. Their complaints have been with respect to management not wanting to participate in the formation of such a committee, and believing management looks upon it as a waste of time and money.(45)

A major flaw in the N.S.W. 1983 Act is that it does not provide for safety representatives, only for safety committees - the British and Victorian Acts provide for both safety representatives and committees. In Britain the union appoints the safety representative, while in Victoria they are nominated. The disadvantages

44. Brooks, A., op.cit., p.378.

45. Interview with R. Prevost, January, 1989.
(In this interview Prevost referred to N.S.W. as well as Victoria. However, this is not to imply that all management/labour health and safety committees are a waste of time, as many employers are supportive of them.)

of the establishment of a safety committee over the appointment of a safety representative are numerous. First, unless there is co-operation from management in the formation of the committee, it may not function to its full potential. Secondly, it is more difficult to make it workable, as committees are more cumbersome, involving more time-wasting procedures. Twenty or more persons must be employed at a workplace before a committee is established, which leaves small workplaces in the wilderness.(46)

As an attempt to provide an outline for an effective self-regulation of occupational health and safety, Creighton mentions that the Act is "grossly inadequate", and is "conceptually confused to the point of incomprehensibility".(47) The relevant provisions of the N.S.W. Act "are so ill-considered and technically inept as to be, even on their own terms, quite unworkable". It appears that major reconstructing of the Act is the only way it may gain some credibility, and as Creighton says -

...the only positive feature of this sorry tale is that the inevitable failure of the statutory provision may provide a stimulus for attempts to establish more meaningful and workable structures through processes of collective bargaining.(48)

46. Brooks, A., op. cit., pp.378-9.

47. Creighton, W.B., op. cit., p.120.

48. ibid, p.120.

One can only wonder how long occupational health and safety issues will stay out of the industrial arena in New South Wales if the Occupational Health and Safety Act 1983 is not re-drafted.

Queensland

The Queensland Minister for Employment, Small Business and Industrial Affairs introduced a Robens-style Act into that State by the release of a Green Paper in October 1987.(49) However, Queensland has not yet advanced to the same extent as Victoria or other States.

With the issue of the above document, the influence and geographic spread of the 1972 Robens Report was complete throughout Australia, and all Australian jurisdictions had adopted, or agreed to adopt, general duties legislation, which would lay down specific duties for employers and employees alike.(50) All Australian States had accepted change from the old-style factory legislation for the betterment of industry, realising that some form of rationalisation and streamlining of

49. Occupational Safety and Welfare Legislation: A Green Paper, Minister for Employment, Small Business and Industrial Affairs, October 1987, Queensland.

50. Brooks, "Queensland: Proposals for Change", op. cit., p.521

the existing industrial safety laws was needed, except Queensland which, according to Brooks, did not follow the formula designed by Robens in 1972, and shows a marked form of weakness in not following the lead of other States. Brooks further describes Queensland's proposals for change as -

...the step into the dark...
Of course, by 1987, it was no longer necessary to step into the dark, or, changing the metaphor, to sail uncharted waters, yet Queensland has chosen to do so - not because the waters are still uncharted, but because that state has previously slipped anchor without having perused the charts now made.(51)

The proposed changes required owners, occupiers, employers and constructors to provide and maintain amenities to secure health, safety and welfare, to provide training programmes for employees, comply with legislation and all and any prescribed standards, code of practice, etc.(52) The obligations do not appear to be as extensive as those in Victoria and New South Wales. Suppliers, designers and manufacturers of plant and substances for use at work are to ensure that they are safe and without risks to health when being used. All research and testing is to be carried out to the end.(53)

51. ibid, p.521.

52. Green Paper, op. cit., p.24.
See also Brooks, op. cit., pp.523-4.

53. Green Paper, op. cit., pp.11-12.

Recommendations are made for Safety and Welfare Representatives to be elected by employees and Welfare Officers to be appointed by employers, in prescribed industries where employees number 30 or more, being persons with considerable experience in the work performed in the particular workplace.(54) Brooks believes, because of the above, a large number of workplaces would be left outside the scope of the legislative provisions. Further, it seems the employer would have input into the choice of an elected representative. Inspections of the workplace by a representative are to take place only at prescribed times, which is in direct contrast to New South Wales, South Australia, Western Australia, Tasmania and Victoria, where the occupational health and safety representative - or health and safety committee members in N.S.W. - may make their inspections of the workplace whenever deemed necessary, and at a reasonable time.(55).

The Green Paper does not mention training for safety and welfare representatives, or protection against discrimination. There is no use of any functions or powers for safety and welfare representatives, and statutory powers are denied when dangerous work needs

54. *ibid*, p.24.

55. Brooks, A., op. cit., p.524.

to be stopped. Problems of this nature are to be solved by an adviser.(56)

The Queensland Factories and Shops Act remained in operation until 1989 and provided a maximum fine of \$100 for a first offence, and then up to \$400 for a repeated offence. After a number of public submissions to the Queensland government and some considerable delay, eventually the government introduced its own Act, which in turn was an amalgamation of laws borrowed from other states with the inclusion of a number of local provisions.(57)

South Australia

The objectives of the South Australian Occupational Health, Safety and Welfare Act 1986 (58) are to secure the health, safety and welfare of persons at work; to eliminate at their source, risks to the health, safety and welfare of persons at work; to protect the public against risks to health or safety arising out of or in

56. Green Paper, op. cit., p.26.
Also quoted in Brooks, op. cit., p.524.

57. Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, South Melbourne, Macmillan, 1991, pp.199-202.

58. Occupational Health, Safety and Welfare Act 1986, South Australia.

connection with activities of persons at work; to involve employees and employers in issues affecting occupational safety and welfare; to encourage registered associations to take a constructive role in promoting improvements in occupational health, safety and welfare practices and to assist employers and employees to achieve a healthier and safer working environment.(59)

The above objectives are similar to Section 6 of the 1985 Victorian Act, though they do appear to go further than just protecting persons at work against risks. The South Australian Act has extended itself to protecting the public against risks arising out of the conduct of work operations.(60)

The South Australian Occupational Health and Safety Commission is a tripartite body of ten members, one of whom is the chairperson, who operates on a full-time basis. The remainder of the committee is made up of two government representatives, three employer representatives (chosen by the Minister, after receiving recommendations from employer associations), and three employee representatives (also chosen by the Minister, after receiving recommendations from the United Trades and Labour Council).(61)

59. Brooks, A., Legislation, op. cit., p.568.

60. *ibid*, p.568.

61. *ibid*, p.569.

Finally, the Minister's nomination, following consultation with employer and employee bodies, of a person who is deemed to be an expert, someone "who is experienced in the field of occupational health, safety and welfare".(62) The Act recognises the aims of the Report of the Interim National Occupational Health and Safety Commission, and the National Occupational Health and Safety Commission Act 1985, which sought co-operation and uniformity in the formulation of occupational health and safety standards throughout Australia.(63)

The general duties of the Act are similar to those of Victoria, in that the employer -

- (a) shall provide and maintain so far as is reasonably practicable -
 - (i) a safe working environment;
 - (ii) safe systems of work;
 - (iii) plant and substances in a safe condition;
- (b) shall provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer; and
- (c) shall provide such information, instruction training and supervision as is reasonably necessary to ensure that each employee is safe from injury and risks to health.(64)

62. Occupational Health, Safety and Welfare Act 1986, South Australia, Section 8(1)(e).

63. Brooks, A., Legislation, op. cit., p.570.

64. Occupational Health, Safety and Welfare Act 1986, South Australia, Section 19(1).
See also Brooks, op. cit., p.571.

Brooks mentions a number of issues that prompted extensive comment in the debate on the Bill preceding the 1986 Act, one being the application of the general duties to contractors. The Bill in its original form spoke of workers rather than employees, and defined contract of service to include contracts for service.(65) Amendments were attempted to exclude independent contractors, however these were defeated, and as a result, contractors and sub-contractors are entitled to protection.

Section 19(3) requires an employer "so far as is reasonably practicable" to monitor the health and welfare of employees, "in so far as that monitoring is relevant to the prevention of work-related injuries", and to keep relevant records and provide information about health and safety to employees in appropriate languages. Further, Section 22 of the Act imposes a duty of care on self-employed and employers in relation to others at the workplace who are not employees, or deemed employees of the employer or self-employed persons, while Section 23 sets out the duty of occupiers of workplaces, not already covered above, as being to ensure as far as is reasonably practicable that the workplace is maintained in a safe condition, and that the means of access to and egress from the workplace are safe.(66)

65. Brooks, A., Legislation, op. cit., p.572.

66. Occupational Health, Safety and Welfare Act 1986, South Australia

There is also provision made to ensure that research and testing is undertaken on plant and substances to ensure that the designers, manufacturers and importers all meet safety standards, as is the case in Victoria and New South Wales.(67)

South Australia and Victoria identify designated work groups as being entitled to a health and safety representative.(68) Brooks states that the original formulation of the Bill provided that unionists only could be candidates for election as health and safety representatives, but following an amendment by the Legislative Council any member of a designated work group is entitled to be a candidate for election. A further amendment by the Council provided that if members request a secret ballot for the election of members, such a request must be adhered to.(69)

According to Section 31(1) an employer must set up an occupational health and safety committee at the request of either a health and safety representative, or a prescribed number of employees at a workplace. However, this does not apply to employers with less than 20 employees. Regulations under the Act require the

67 Brooks, A., Legislation, op. cit., p.573.

68. Occupational Health, Safety and Welfare Act 1986, South Australia, Section 27.

69. Brooks, A., Legislation, op. cit., p.575.

appointment of a chairperson, who does not have to be an employee delegate (as in New South Wales), for a term of up to twelve months.(70) The obligations on employers to both committees and health and safety representatives are to consult proposed changes to the workplace to work procedures or to the plant; to consult on occupational health and safety practices and changes; to consult on applications to the Chief Inspector; to permit health and safety representatives to accompany inspectors around the workplace; to be present at interviews with employees, and have access to occupational health and safety material; to notify occupational health and safety representatives of accidents, incidents, dangers and work-related injuries; to provide health and safety representatives with necessary facilities and assistance; and all health and safety representatives are entitled to paid time off work for training.(71) The Act also has sections on discrimination against occupational health and safety representatives and employees for being members of occupational health and safety committees,(72) and provides for an inspector to enter and inspect the workplace and issue, if warranted, Improvement and/or Prohibition Notices.(73)

70. *ibid*, p.578.

71. *ibid*, p.578.

See also Occupational Health, Safety and Welfare Act 1986, South Australia, Section 34.

72. *ibid*, Section 56.

73. *ibid*, Section 38.

Health and safety representatives have sweeping powers, under Section 35, to issue a Default Notice (corresponding with the Victorian Provisional Improvement Notice, provided for in Section 33 of the Victorian Act) if they believe the Act is being contravened. The health and safety representative is further entitled to direct a cessation of work if it poses an immediate danger or threat to health and safety. Following such direction, the workplace must be attended by an inspector within one day (in the metropolitan area), or two days if in the country. The inspector then determines what course of action is to take place and if there is an immediate threat to life. The inspector has the powers to enter and inspect the workplace, take samples and copies, seize evidence, insist on people answering questions relating to health safety and welfare, and to take interpreters or be accompanied as necessary by assistants.(74) Inspectors may also issue Improvement and Prohibition Notices under Sections 39 and 40, subject to a review by a committee. Employees whose work is suspended as a result of these notices are entitled to be paid whilst the notice is still in progress.(75)

Sections 56 and 59 contain clauses dealing with discrimination and offences against the Act.

74. Brooks, A., Legislation, op. cit., pp.575-9.

75. ibid, p.580.

Discrimination is prohibited against employees regarding their membership of health and safety committees, holding office as health and safety representatives, aiding inspectors, health and safety representatives or committees, or complaining about health and safety issues in the workplace. Fines against discrimination and other related offences carried out against the Act and are categorised as divisional fines. These fines range from the lowest being Division 7 of \$1,000 to the highest Division 1 of \$100,000. The causes for implementation of such fines may range from such acts as the breach of the employer's duty, to the failure to comply with Improvement and Prohibition Notices.(76)

The first General Duties Legislation was passed in 1972. The same year the Industrial Safety, Health and Welfare Act emerged, which in turn was preceded by some three months by the Robens Report.(77) According to the Steering Committee, some of the factors which contributed to the failure of the 1972 Act were that there was not one Act that covered all employed persons in South Australia on occupational health safety and welfare; the general duties legislation needed to be supported by more specific duties so as to avoid industrial hearings being one-sided; health and safety representatives' power

76. *ibid*, pp.580-1.

77. *ibid*, p.554.

and rights, or protection from discrimination were eliminated; the levels of fines were too low, and the development of a model health and safety policy by the Industrial Safety, Health and Welfare Board had nullified the requirements of an employer's written health and safety policy; and the sections relating to notification of accidents and incidents had been inadequately complied with.(78)

Western Australia

Western Australia is the only State that has adopted a two-stage process, by setting up the Occupational Health, Safety and Welfare Act 1984, and subsequently imposing general duties and granting rights of participation to workers through the Occupational Health, Safety and Welfare Amendment Act 1987.(79)

Prior to the development of the 1987 amended Act, the Western Australian Government policy on occupational health safety and welfare was outlined in a discussion paper in 1983. The proposed policy was preventative in

78. *ibid*, pp.503-4.

79. Brooks, A., "The Western Australian Occupational Health, Safety and Welfare Act", in Guidebook to Australian Occupational Health and Safety Laws (3rd. ed.), North Ryde, CCH Australia, Ltd., 1988, p.596.

that its aim was to develop ways and means of reducing, or eliminating, hazards at the workplace through the process of participation between employers and employees.(80) With the introduction of this document there was an acknowledgment that Robens-style legislation should be introduced. The policy followed other States, and some overseas countries, and was in line with the ideas of the Convention 155, and Recommendation 164 of the International Labour Organisation, a world organisation, established as part of the Treaty of Versailles to improve conditions of life and work by building up a comprehensive code of international law and practice. Many responses to the discussion document were received from the public, supporting these reforms.(81)

The Robens Report and the Williams Report were instrumental in reforming the Western Australian Occupational Health and Safety Legislation, as was the Report of the South Australian Occupational Safety, Health and Welfare Steering Committee.

80. Department of Occupational Health, Safety and Welfare: A Guide to the Act, Western Australia, March 1988, p.1.

81. *ibid*, p.1.

...increasing costs of industrial injury continuing and unregulated exposure to a range of chemical substances, fragmented and anachronistic statutory and structural provisions, as well as unenlightened management and union attitudes to safety...(82)

In Western Australia, there did not appear to be enough data collected and reported upon, on work-related illnesses, except for mining-related diseases. Therefore, no accurate identification was available regarding work groups most at risk. The public discussion document mentioned that "employers have a common law responsibility for providing a safe working environment and plant, a safe system of work." However, few people in industry had sufficient training in health and safety, the involvement of employees in making decisions was rare, "styles of supervision at workplaces are often authoritarian", and most workers saw safety as a management prerogative. The document pointed out that some employees, perhaps half of the workforce, for example those in banks, offices and hospitals, were not offered any specific statutory protection, there were clearly "not enough inspectors" to inspect the workplace, and the early British Factory Laws were unable to take account of the changes that were

82. Cited in Brooks, A., "The Western Australian Occupational Health, Safety and Welfare Act", op. cit., P.596.
Brooks mentions that the above re-appeared in the Report of the South Australian Occupational Safety, Health and Welfare Steering Committee.

taking place in industry and the different occupations which had emerged, as well as the concomitant changes in hazards within the workplace.(83)

For the above reasons, Western Australia adopted a two-stage procedure for the passage of its general duties legislation, conforming to the basic Robens style of a single enabling Act, by designing the second stage of the procedure as amending Act, rather than as a Principal Act.(84) Thus, the administrative provisions, the general duties and the participatory provisions, are now all part of the Occupational Health, Safety and Welfare Act 1984-1987. The general duty of employers to employees is contained in Section 19 -

An employer shall, so far as is practicable, provide and maintain a working environment in which his employees are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall...(85)

Hazards are defined in Section 3 as meaning anything that may result in injury to the person or harm to the health of a person - the content of this duty is the same as in the Victorian Act, Section 24. An employer is

83. *ibid*, pp.596-8.

84. *ibid*, p.605.

85. Occupational Health, Safety and Welfare Amendment Act 1987, Western Australia.

defined as "a person who employs one or more other persons under contracts of employment or apprenticeship", and an employee as "a person employed under a contract of employment or apprenticeship". As under the Victorian Act, the employer is required to provide a hazard-free working environment only "so far as is practicable". Practicable is defined, in Section 3 as meaning -

reasonably practicable having regard, where the context permits, to -

- (a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring;
- (b) the state of knowledge about -
 - (i) the injury or harm to health referred to in paragraph (a);
 - (ii) the risk of that injury or harm to health occurring; and
 - (iii) means of removing or mitigating the risk or mitigating the potential injury or harm to health; and
- (c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii).(86)

Section 21(1) of the Act requires employers and self-employed persons to take reasonable care to ensure their own health and safety at work, and so far as is practicable ensure that the health or safety of a person not being an employee is not adversely affected.

86. See also Brooks, A. pp.606-7 for the similarities of requirements of employers.

Brooks points out that the Western Australian Act, like the New South Wales, Tasmanian and Victorian Acts, fails to take up recommendation of the various Reports that employers should prepare and maintain written health and safety policies. Only the South Australian and British Acts have followed the above recommendation.⁽⁸⁷⁾ Section 20 of the South Australian Act requires employers to prepare and maintain written health and safety policies, while under the British Act, Section 2(3), an employer is required to prepare (and revise) a written statement of his general policy with respect to health and safety, and the arrangements for carrying it out.

Under Section 22(1) the general duties of occupiers of a workplace are similar to those in Victoria and South Australia, in that a person who has the management or control of a workplace, shall take measures to ensure that the means of access to, and egress from, the workplace, are without being exposed to hazards. The duties of manufacturers, importers, and suppliers of plant for use at work (Section 23(17)) are to ensure that design and manufacture are hazard-free and that adequate information about the place and its proper use is supplied. This Section corresponds with Victoria, but in New South Wales, Section 18(2) requires manufacturers to ensure that the plant is safe, and not merely stated

87. *ibid*, p.608.

as designed to be safe. Also, Section 23(2) states that a person who manufactures, imports etc., should ensure that adequate toxicological data in respect of substances is provided. This requirement differs markedly from Victoria, New South Wales, and South Australia, which require the testing of plant and substances, and adequate information about results to be given.

The role of occupational health and safety representatives (Part IV) comes about by employees giving notice to the employer regarding an election at the workplace. Both union and non-union workplace employees are entitled to a delegate to be trained in occupational health and safety matters. However, a health and safety representative is to be an employee of the workplace (as is the case in all the other Acts), but not necessarily a unionist, and must, under Section 31(8), have been continuously employed by the employer concerned during the preceding two years; have had a total of at least two years' experience in work of similar nature to the work being performed; have had such training, if any, as is agreed under Section 30 as being adequate for the purposes of this paragraph; or have been approved by the Commissioner for the purposes of this paragraph.

Brooks notes that there was a steadfast opposition to trade unions selecting occupational health and safety representatives, and the requirement of representatives

having to have a minimum of two years' experience in that particular industry.(88) Section 31(8), mentioned above, sets out the criteria as a compromise between union and non-union occupational health and safety representatives.

The power of inspection of the health and safety representative in Western Australia, as in Victoria, South Australia and Tasmania, is limited in that it may only be carried out once in each thirty days. In the other jurisdictions mentioned, a representative is free to inspect the workplace at any time if reasonable notice is given to the employer. The Western Australian representative is permitted to accompany an inspector (Section 33(2)(a)) whilst undertaking an inspection of the workplace. Victoria's Section 31(1)(b) makes a similar provision.

In the issuing of Provisional Improvement Notices, the Western Australian Act does not follow suit with Victoria and South Australia, where the representative has the power to issue such notices. In the event of workplace disagreement the issue is to be resolved by employer and occupational health and safety representative, health and safety committees, or employees, depending on the agreed procedure.

88. *ibid*, p.611

If these attempts fail to resolve an issue, and if there is a risk of serious injury, "the employer or a health and safety representative may notify an inspector thereof" (Section 25(1)). This differs from the Victorian and South Australian Acts in that they provide that the occupational health and safety representative may direct a cessation of work posing any immediate threat to the employee.

In Western Australia, under Section 33(2)(b), the occupational health and safety representative may request the employer "to establish a health and safety committee for the workplace at which there are in excess of ten employees". Neither the Victorian or South Australian Acts place any numerical value on committees in a workplace. Brooks regarded this point as being too cumbersome a device for a small workplace, if for example there were only eleven employees.(89) Section 38 sets out the composition of the health and safety committees. Paragraph (4) states -

At least half of the members of a health and safety committee shall be health and safety representatives or persons elected by the employees for the purposes of this section.

89. *ibid*, p.618.

The function of the health and safety committee (Section 40) is to facilitate consultation and co-operation between an employer and employee initiating, developing and implementing measures designed to ensure the health, safety and welfare of employees at the workplace; to keep itself informed as to standards relating to health, safety and welfare; to recommend to employer and employee the established maintenance of programmes; to keep in an accessible place such information as is provided for under the Act; to consider recommendations to the employer as the committee sees fit, and to perform other functions as may be prescribed in Regulations, or as are given to the committee, with its consent, by the employer. It would seem that the above functions of the committee generate a good sound relationship of co-operation and participation between employer and employee. Brooks points to the fact, and rightly so, that membership of the committees on the part of health and safety representatives, could cause prejudice, and it could be preferable that employee membership of such committees be entirely separate from health and safety positions.(90) On the other hand, consultation, co-operation and communication between two vested interest groups, such as representatives and committees, should be encouraged.

90. *ibid*, p.620.

Tasmania

Tasmania was the second Australian state to introduce industrial safety legislation. The Industrial Safety, Health, and Welfare Act came into force on 1st January, 1979. As in other states, the Tasmanian Act was not preceded by a report. The Parliament had available the report of the Robens Committee, and was able to refer to the South Australian Select Committee Report and the legislation based on these two reports - the Health and Safety at Work Act (U.K.), and the Industrial Safety, Health and Welfare Act (S.A.). Accordingly, the Tasmanian Act closely conforms with the 1972 South Australian Act, as it incorporates a large number of ideas that were recommended by the Robens Committee, which in turn, as previously mentioned, found fuller expression in the Health and Safety at Work Act.(91) Two important definitions in the Act are those of employee and industry. An employee, in Section 3, is defined as -

- (a) in relation to an industry includes any person employed or engaged in that industry, whether or not the person is so employed or engaged under a contract of employment; and

91. Brooks, A. "Tasmanian Legislation" in Guidebook to Australian Occupational Health And Safety Laws (3rd ed.), North Ryde, CCH Australia Ltd., 1988, p.639.

- (b) in relation to any educational or other training establishment includes any person who uses machinery in that establishment.

From the above, there is no specification that an employee is to be engaged for monetary purposes. The Acts of Victoria, New South Wales and Northern Territory differ to that of Tasmania, and South Australia "specifically deem persons who perform work gratuitously for an employer to be an employee". The Tasmanian definition appears to be much broader in that it covers people working gratuitously for a person employing or engaging no others.(92) This may include persons receiving training in trade schools, such as apprentices, or school children in woodwork or metalwork classes, as well as young people in reform schools.

Tasmania has the only Act which defines industry, and as Brooks says -

It is the only Act which needs to do so, because of its (now) unique definition of employee 'in relation to industry', and its associated and, again, now unique formulation of the employer's duty of care as applying for 'every occupier of a workplace and every person carrying on an industry'.(93)

92. *ibid*, p.640.

93. *ibid*, pp.640-1.

It appears that the reference to industry in the Tasmanian Act is not as limiting by contrast to the duties in other Acts. Though the term "industry" is defined rather broadly, it comes down to the point of whether it is related to the person on whom the duty is being laid, or the type of work which someone is having done. An example, according to Brooks, may best be explained by the following. If the activity in question was a Catholic parochial primary school, run by nuns, with no lay teachers involved - does the school represent an industry? Is the industry in question the teaching industry generally, or simply this particular school? If the latter, is it a place where persons are employed or engaged? It is not a place where they are employed or engaged for reward. The definition, however, does not mention reward. The phrase "for reward" - does it add anything? We know that employed means a contract of service and the nuns are not under a contract of service. Are they engaged? They are engaged if we look at the ordinary use of the word: engaged in the calling of teaching children. But, engaged is not to be used here, in contrast to employed to indicate a contract for service. If so, then the nuns will not be workers to whom duties are owed.(94)

A further uncertainty in Tasmania arises from the word "industry", relating to the focus of the industry

94. *ibid*, p.641.

concerned. For instance, in the school mentioned above, if a person is asked to work at a function, fete, etc., where others are employed or engaged by other persons in the community, then such a worker is part of an industry, and therefore has been employed or engaged by the occupier/employer.(95)

The general duty of employers and occupiers is in Section 32 of the Act, and provides that -

Every occupier of a workplace and every person carrying on an industry shall take reasonable precautions to ensure the health and safety of persons employed or engaged at that workplace or in that industry.

The workplace is defined as "any premises where persons are employed or engaged in industry". The phrase "in industry", according to Brooks, suggests a general coverage, meaning the plumbing industry, printing industry, the textile industry, etc. If the definition of in industry was intended to be linked to the occupier's enterprise, it may be more appropriate to use the phrase "employed or engaged in an industry".(96) It appears that the term "industry" in the definition of "workplace" has a different meaning to "industry" in Section 32, and it is difficult to see how the reference

95. *ibid*, pp.641-2.

96. *ibid*, pp.642-3.

to "every occupier of the workplace" in that Section adds anything to "every person carrying on industry". Brooks concludes that the wording of the Act is left unclear and is possibly mistaken, and that the meaning will have to be resolved in the courts when a situation arises.

Further ambiguity is noted in the Act regarding the definition of industry under the section "Persons to whom the duty is owed", where it states the duty of the employer, occupier or contractor as being to persons employed or engaged at that workplace or in that industry, thereby making the scope of the section uncertain.⁽⁹⁷⁾ The Tasmanian Act, like the Northern Territory Act, makes no provision for duties to be imposed on manufacturers, importers, and suppliers of articles and substances for use at work. The Act, however, does contain sections which prohibit the sale, lease, hiring, etc., of machinery which does not comply with the imposed obligations in the dangerous machinery provisions.

Sections 33 and 34 examine the duties of employees and safety representatives. An employer is required to carry out procedures for the purpose of their safety and the safety of others in the plant, and if for instance protective clothing or equipment is issued, is required to conform to such requirements, in order to achieve the

97. *ibid*, p.644.

purposes of Section 32 of the Act. Section 34 stipulates that there shall be one safety representative for every ten or more employees employed or engaged in the workplace. An employee may call an election at the workplace after fourteen days' notice, and each employee is entitled to vote for a safety representative. There is no provision in the Regulations to say that trade unions will or will not participate in elections for safety representatives. The Regulations mention that any employee within the workplace can call a meeting, with 14 days' notice, to determine the manner and date of an election. A returning officer is to be appointed, and he or she shall display the date of the election. Following an election, the returning officer forwards the name of the elected safety representative to the Secretary of the Department of Labour and Industry. The Secretary, further to Regulation 5, then issues the representative with a Certificate of Appointment, which is valid for three years, unless a new representative is elected, or the certificate is revoked on the grounds of unsatisfactory conduct.

Brooks states that there is no recognition at all of the role of trade unions in the participatory structure, nor is there anything in the Regulations to prevent trade union involvement, providing the requirements of Regulation 4 are complied with.(98)

98. *ibid*, p.651.

Regulation 7 sets out the functions of safety representatives, who are required to represent the safety interests of employees, to encourage safe work practices, and bring to the notice of the occupier any safety or health hazards. In carrying out these functions, the safety representative is permitted during their normal working time to make all inspections as are needed, and to accompany inspectors in the course of their inspection of the workplace. There is no provision for the safety representative to issue Provisional Improvement Notices (Victoria), or Default Notices (South Australia), to direct a cessation of work in a situation where the representative believes there is an immediate threat to health and safety.

The occupier is required, according to Regulation 9, to provide certain information to safety representatives, such information being the result for instance of inquiries made by the occupier into an accident, an occupational injury, or occupational illness in the workplace. The employees' safety representative, as far as practicable, shall be provided with information related to hazards of the work carried out in the workplace. An occupier shall not dismiss an employee, threaten an employee with dismissal or alter the employee's position to the occupier's prejudice by reason of the fact that the employee is performing the functions of a safety representative.

The Secretary (of the Department of Labour and Industry) has the power under the Act to appoint inspectors to enter, inspect, make examinations and enquiries, conduct tests, require the production of records and documents, and when necessary take interpreters into the workplace.(99) This closely follows other Acts regarding inspectorate powers.

Victoria

The State Conference of the Victorian Branch of the Australian Labor Party adopted an "Occupational Health and Safety Policy for Victoria" in October 1981. This policy was part of the A.L.P. election platform in April, 1982, and was actively promoted by the then Shadow Minister for Labour and Industry, J. L. Simmonds, and was filed in a way that suggested it would be implemented under the auspices of that Department. After the election of the first Cain government, in April 1982, Mr. Simmonds became Minister for Employment and Training, and in September 1982 it was announced that the responsibility for implementing the policy would rest with his ministry.(100)

99. The Industrial Safety, Health and Welfare Act 1977, Part II, Section 10, Division 1.

100. Creighton, W.B., op. cit., pp.10-11.

The Occupational Health and Safety Bill was introduced in the same year, and circulated too was a Dangerous Goods Bill, which was eventually withdrawn after failing to reach any consensus with employers. The Occupational Health and Safety Bill was permitted to lapse by the outgoing Parliament, which was faced with numerous crippling amendments tabled in the Legislative Council. However, the second Cain government did manage a consensus with employers, even though the resultant Bill was vastly watered down.(101)

Following the Labor Party gaining power in the Legislative Council in the 1985 election, a new Bill was introduced, the Occupational Health and Safety Bill, which attempted to set at rest some of the fears that the Liberal Party and employers had by the 1983 revision.(102) The Victorian Occupational Health and Safety Act represents the most progressive legislation protecting workers' health and safety to be introduced in Australia. It established a tripartite Occupational Health and Safety Commission, to be the consultative vehicle from which future regulations would to be developed. The Act imposes general, and specific, duties on employers and employees, which include contractors and sub-contractors; provides for the election of health and safety

101. Mathews, J., op. cit., p.15.

102. Brooks, A. "The Victorian Occupational Health and Safety Act 1985", op. cit., p.489.

representatives, utilising the resources of unions, and establishes their statutory rights and powers; provides for joint workplace health and safety committees; and gives inspectors the power to issue summary Improvement and Prohibition Notices.(103) An Improvement Notice (Section 43) is a written direction requiring a person to rectify a breach of the law. It may be supported by references to regulations, or by general duties clauses of the Occupational Health and Safety Act. A time limit is set within which improvement must be carried out. A Prohibition Notice is a written direction prohibiting the work or an activity to be carried out that, according to an inspector, will involve an immediate risk to the health and safety of any person. When an inspector verifies that the risk has been removed, the activity may be started. Part II of the Act mentions the Occupational Health and Safety Commission (O.H.S.C.). As with all other legislation of this type, the Victorian Act provides for a co-ordinating administrative body, in this case, the O.H.S.C. The function of the Commission is to enquire into matters referred by the Minister; to examine licensing and registration schemes; to provide advice to departments, employer bodies and unions; to formulate standards; to promote education and training, and approve courses in occupational health and safety; to collect and disseminate information on occupational

103. Mathews, J., op. cit., pp.35-6.

health and safety and welfare; to recommend public enquiries; and to commission and sponsor research into occupational health and safety and welfare. The commission is empowered to issue for public comment Regulations and Codes of Practice, and the Minister is to respond in writing within 60 days to any recommendation. The composition of the Commission is a chairperson and thirteen other members appointed by the Governor in Council, including five persons nominated by the Victorian Trades Hall Council, five persons nominated by the Victorian Congress of Employer Associations, three persons having knowledge of, or experience in, occupational health and safety, nominated by the Minister after consultation with the Victorian Trades Hall Council (V.T.H.C.), and the Victorian Congress of Employer Associations (V.C.E.A.).

With regard to the general duties of care, Section 21(1) imposes a duty on employers to -

provide and maintain so far as is practicable for employees a working environment that is safe and without risks to health.

Section 4, Part I, defines the word "practicable", as having regard to the severity of the hazard or risk in question, the state of knowledge about that hazard or risk and any ways of removing or mitigating that hazard or risk, the availability and suitability of ways to

remove or mitigate that hazard or risk, and the cost of removing or mitigating that hazard or risk. The term "reasonably practicable" dates back to the amended Bill of 1983, which was an extended definition of "practicable". Both Brooks and Creighton (104) believed that there was a great deal of criticism of the use of the phrase "so far as is practicable", as opposed to the more usual phrase of "so far as is reasonably practicable". After much debate between the Legislative Assembly and the Legislative Council, "practicable" for the purposes of the Occupational Health and Safety Act, can be regarded as interchangeable with "reasonably practicable".

Creighton maintains that Lord Reid in Marshall v. Gotham had no doubt that there was some difference between the two terms:-

...if a precaution is practicable it must be taken unless in the whole circumstances and as men's lives may be at stake it should not be held that to take a practicable precaution is unreasonable.(105)

The above suggests that there is no difference in practice whether the general duties provisions are qualified by "reasonably practicable" or "practicable".

104. Brooks, A., op. cit., pp.490-1.

See also Creighton, W.B., op. cit., pp.50-2.

105. ibid, p.51.

So far as the Act is concerned, the point is of academic, or linguistic, interest only. Section 21(1) states:-

An employer shall provide and maintain so far as is practicable for employees a working environment that is safe and without risks to health.

Creighton maintains that the working of the above Section clearly means that this duty is owed by all employers in Victoria to all of their employees. The Act, in Section 4, defines "employee" as being "a person employed under a contract of employment or apprenticeship". Further, Creighton mentions that this is a common practice in industrial legislation in Australia, and has the effect of bringing the large majority of Victorian workers under the guidance of Section 21.(106) Alone, this definition of employee would exclude several significant categories of workers, namely members of a partnership, independent contractors and persons in the relationship of agent and principal, but it must be read in conjunction with Section 21(3) which states for the purposes of that section the employee includes independent contractors engaged by an employer and any employees of the independent contractor in relation to matters that the employer has control of, or would have control of, but for any agreement between the employer and the contractor.

The duties of employees under Section 25 are similar to those in other Acts. The British model is followed by placing a duty of care on employees for their own safety, as well as that of others.(107) The duty of employees was also mentioned in the 1981 Victorian Act, asking them to co-operate with their employers in the fulfilment of their obligations regarding occupational health and safety. The 1983 Bill, and the 1985 Act, omit that duty, requiring of employees only to take care of their own health and safety, and of others in the workplace, or of those who may be affected by their acts or omissions at work. Section 25 states that employees shall not -

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health safety or welfare in pursuance of any provision of this Act or the regulations;
- (b) wilfully place at risk the health or safety of any person at the workplace.(108)

Creighton argues that Section 25 is owed to the world at large, but does not extend to acts or omissions while employees are away from the workplace.(109)

107. Brooks, A., op. cit., p.493.

108. ibid, p.494.

109. Creighton, W.B., op. cit., p.70.

The definition of "workplace" appears to be very broad.
It is referred to as being -

...any place, whether or not in a building
or structure, where employed or self-
employed persons work.(110)

This definition would no doubt include factories or offices in the conventional sense, temporary workplaces, such as construction sites, and paddocks on a farm. However, nothing is covered that actually defines a "place". Does this mean, asks Creighton, that there is no workplace for truck-drivers whilst they are on the highway, or for a pilot of an aircraft during flight?(111) Section 51(a) clearly states that any "building structure, ship, boat site or place is a workplace" for those working on board. He also makes the point that this section is consistent with Section 14(a) of the Victorian Industrial Safety, Health and Welfare Act 1981.

The Victorian Act adopts the most full-blooded version of the British Act to date in Australia, and in some sections takes the process of self-regulation even further than Robens or the framers of the 1974 Act

110. Occupational Health and Safety Act 1985, Victoria, Section 4.

111. Creighton, W.B., op. cit., p.71.

had envisaged, according to Creighton,(112) particularly in the area of the power exercised by health and safety representatives.

Section 29(1) clearly spells out the fact that employers are to negotiate with the employees of trade unions to determine the "designated work groups" (DWG) at a workplace. This concept is not new, as it was debated in the 1983 Bill. Brooks says there was the fear that the 1983 Bill would develop vast armies of health and safety representatives in multi-union workplaces.(113) The points affecting the determination of a designated work group are the number of employed at the workplace; the nature of each type of work performed at the workplace; the number and grouping of employees who perform the same, or similar, type of work; the areas at the workplace where each type of work is carried out; the nature of any hazards at the workplace; and any overtime or shift working arrangements at the workplace. This appears to be a very flexible arrangement, as is the definition of the term "workplace".

Under Section 29(1) a trade union may, where one or more of its members work as employees, request the employer to negotiate with it to determine the designated

112. Creighton, W.B., op. cit., p.71.

113. Brooks, A., op. cit., p.496.

work groups at the workplace. The employer is obliged to comply with the request for negotiation within fourteen days (sub-section (2)), and if no agreement is reached from the negotiations, the employer and the unions have the right to apply to the Occupational Health and Safety Commission to resolve the issue and determine the DWGs for that particular workplace. The Opposition claimed that the above section was back to front with regard to designation of work groups, and that the employer should initiate discussion with employees with regard to work groups.(114) However, there is nothing to stop employers setting up negotiations with unions over DWGs. On the other hand, if by any chance employees, via their union, do not wish to have representation, then Part IV of the Act would not apply. After the designated work groups have been determined, then Section 30(1) permits the employees to "conduct an election for a health and safety representative". An election may also be conducted for non-union members in a DWG by an inspector according to Section 30(4). When elected, the non-union representative has the same powers as those of the representative from a union based DWG.

Section 30(7) of the Act sets out when a duly elected representative may cease to hold office as ceasing to be an employee in the designated work group;

114. *ibid*, p.497.

resigning as a health and safety representative from the designated work group in respect of which the person was elected under Section 29; failing to be re-elected; or being disqualified under Section 36.

Brooks (115) and Creighton (116) both believe it is unclear how to distinguish when and how re-election of safety representatives is to be brought about to remove them from office, though it is feasible that safety representatives may lose office on ceasing to be employed within the DWG, for instance moving from place to place because of shift work, localities or departments. Further, union members could express dissatisfaction with the performance of representatives by failing to nominate them for future re-election.

The 1983 Bill gave health and safety representatives similar powers and functions (Sections 31-34) as those in the 1985 Act, which prompted substantial Opposition resistance in debates during 1983 and 1984.(117) According to Section 31(1) the representatives are entitled to inspect the workplace "any time after giving reasonable notice to the employer" and

115. Brooks, A., op. cit., p.499.

116. Creighton, W.B., op. cit., p.118.

117. Brooks, A., op. cit., p.499.

"immediately in the event of an accident, hazardous situation or dangerous occurrence or immediate risk to the health and safety of employees". There are no set guidelines regarding the frequency of inspections, beyond the reasonable notice given to employers, as mentioned above. Representatives are also empowered to accompany an inspector around the workplace, and to receive from the employer any information that the employer possesses relating to health and safety at the workplace. Representatives are given the right to be present, only with the consent of the employee, at any interview between employer and inspector.

Brooks points out that the Victorian Act is much broader with regard to representatives. In South Australia no mention is made of such powers, and in Britain representatives are permitted only three-monthly inspections after reasonable notice is given. In New South Wales the Act also includes three-monthly inspections, but immediate inspections in high risk or accident situations, with employer approval.⁽¹¹⁸⁾ It could be viewed that representatives could have some potential for abuse - for example, constant and excessively long workplace inspections. However, there are two methods under the Act by which this situation may be dealt with. First that inspection was not

118. *ibid*, p.500.

"necessary" or "needed" and therefore a refusal to pay wages may result (Section 31(2)(d)), and the second is a complaint registered by an employer "to the Full Session of the Industrial Relations Commission". (Section 36(1)).

Creighton sees a more practical approach to the above situation of constant inspections by occupational health and safety representatives as being an agreement with employers regarding the frequency and duration of routine inspections, and the circumstances needed to justify immediate inspections of the workplace.(119)

The 1983 Occupational Health and Safety Bill provided powers for safety representatives to issue provisional prohibition notices (PN). These notices would have given occupational health and safety representatives the power to "stop a process only if that process represented an immediate threat to the health or safety of any person".(120) In other words, this power would have constituted the occupational health and safety representative to stop work, as a result of which it was opposed and defeated. Instead the 1985 Act has Section 26 giving occupational health and

119. Creighton, W.B., op. cit., p.12.

120. Simmonds, J.L. (M.P.), Occupational Health and Safety Bill, Explanatory Second Reading Speech, 17 November, 1984, Victoria.

safety representatives the power, after consultation with employers, to direct a cessation of dangerous work, if they believe that there is an immediate risk to the health and safety of any person in the workplace.

The Section states:-

(2) Where the issue concerns work which involved a threat to the health and safety of any person and -

(a) the threat is immediate; and

(b) given the nature of the threat and degree of risk, it is not appropriate to adopt the process set out in sub-section (1) -

the employer and the health and safety representative for the designated work group in relation to which the issue has arisen may after consultation jointly direct or, if the consultation does not lead to agreement between them, either of them may direct that the work shall cease.

Brooks points to the fact that as Section 26 speaks of employer and health and safety representative attempting to resolve issues, with both health and safety representatives and employers having the power to direct cessation of work, it appears unlikely that a health and safety representative would issue a Provisional Prohibition Notice (if they had the power to do so) without first suggesting a cessation of work to the employer. However, if the employer had directed a cessation in response to a suggestion or on their own

assessment of the situation, a Provisional Prohibition Notice would not have been required.(121)

Section 26 attempts to lay at rest some of the fears expressed by the Opposition and employer organisations in earlier debates regarding what work may be done by employees during a cessation of work. Sub-section (3) answers this debate in that the employer is given power to assign employees to alternate work if their normal duties have "ceased pursuant to sub-section (2)". If an inspector is required to attend under sub-section (4), such person may issue a Prohibition Notice, or otherwise should consider the employees concern to be valid in that it precipitated the cessation of work, and if employees have not been assigned alternate work, they are therefore entitled to receive full pay for the period in question. Brooks sums up these two sub-sections as ensuring:-

...on the one hand that the exercise of the power to stop work is not overly oppressive on employers and on the other hand that health and safety representatives are not made reluctant to exercise the power when appropriate through fear that to do so would cause some or all of the workers they represent to lose wages.(122)

In November 1989 the Victorian Occupational Health and Safety Commission issued guidance notes,

121. Brooks, A., op. cit., pp.500-1.

122. ibid, p.502.

Issue Resolution, to cover Section 26(1), (2) and (7) of the Act more specifically.(123) These notes stress that the resolution of workplace issues is an extremely important component of an occupational health and safety programme. The philosophy of the Occupational Health and Safety Act 1985 is consultation, communication and co-operation. The basic intent is to provide a mechanism to solve problems, not to create confrontation and trouble. The Occupational Health and Safety (Issue Resolution) Regulations 1989, deal with this important area, specifically for workplaces where there is no agreed procedure for the resolution of issues. Under these Regulations the employer must nominate specified health and safety issues. Employees are to raise issues with their occupational health and safety representatives who in turn will raise these issues with the nominated employer representative. Where there are no elected occupational health and safety representatives, the employees raise the issues directly with the nominated management representative. Once the issue has been raised, it can be resolved, taking into account the following factor of whether the hazard or risk can be isolated; the number and location of employees affected; whether appropriate temporary measures are possible or desirable; whether environmental monitoring is desirable;

123. Victorian Occupational Health and Safety Commission, Guidance Notes on the Occupational Health and Safety Act, Issue Resolution, November 1989.

the time that may elapse before the hazard or risk is permanently corrected; and who is responsible for performing and overseeing the removal of the hazard or risk. All details can be set out in writing if requested, and the issue and its resolution is to be communicated to employees, the health and safety committee, and other relevant bodies. Organisations should develop their own issue resolution procedures. In fact, the Occupational Health and Safety (Issue Resolution) Regulations 1989 were introduced because organisations were reluctant to establish such procedures, and the Regulations provide pressure and guidance for them to do so.

According to Section 31(1)(c) a health and safety representative has the right to "refuse the establishment of a health and safety committee in accordance with Section 37". Section 37(1) states that an employer must set up a health and safety committee within three months after the request by a health and safety representative. Further, this section envisages that an employer may be required to set up a committee by regulation. At least half of the members of the committee shall be employees, with its function to be to facilitate co-operation between the employer and employees on health and safety issues, and to formulate review and disseminate to employees standards and rules needed to be complied within the workplace. Section 37(4)(b) also mentions

that all such information given to employees shall be in such languages as are appropriate. Committees are to have the freedom required to regulate their own procedures, with two requirements being that they shall meet at intervals not exceeding three months. Half of the members of the committee may meet at any time that such meeting may be required.

It certainly appears that the Act only offers mild guidance with regard to the formation and function of the committee, and therefore leaves its operation to be by negotiation between the parties, when they may develop their own criteria. Creighton sees the function of the committee as follows:-

This is clearly intended to allow the parties to develop a committee structure that is suited to the special needs of the undertaking. This, in turn, is consistent with the notion that the role of the law in the context of self-regulation is to provide a framework within which employers and workers can develop arrangements for joint participation which take account of the institutional and organisational requirements of the participants.(124)

Part IV of the 1985 Act deals with the power of inspectors to issue Improvements and Prohibition Notices. Inspectors also embody the power to enter

124. Creighton, W.B., op. cit., p.161.

the workplace at any given time to take samples and photographs, and to examine and remove substances that may be required for analysis, etc. They also have power to issue Improvements and Prohibition Notices, and in so doing, follow the British Act. It has been suggested in other State Acts that equivalent powers exist. In Tasmania for example the power is vested only in the Minister, while in New South Wales the power is latent only, in that Section 42(2) provides for regulations which may empower inspectors to issue notices, such regulations however having not yet appeared.(125) Hence, the Victorian Act is more expressive, and has been more determined to introduce those procedures which have been acknowledged as being particularly valuable in Britain.

The remaining Sections of the Victorian Act cover codes of practice and regulations. Section 55 provides for codes of practice to be approved by the Minister, on Commission recommendation, "for the purpose of providing practical guidance to employed, self-employed persons and employees". Section 55(2) states that "a code of practice may consist of any code, standard, rule, specification or provision relating to occupational health and safety formulated by the Commission". Approved codes of practice are not binding, and contravention is not an offence, but they do have

125. Brooks, A. op. cit., p.503.

evidentiary weight in any proceedings. If for instance it is alleged that a person contravened, or failed to comply with, the regulations to which an approved code of practice was in effect at the time, then such approved code of practice shall be admissible in evidence. Section 59 relates to regulations under the Occupational Health and Safety Act regarding the safety, health and welfare of all persons in the workplace. Many regulations are in general use today, such as the Safety Regulations, the Machinery Regulations, the Laser Safety Regulations, and a great number more, all protecting the Victorian workplace from injury.

When the Kennett Liberal Government gained power in Victoria in October 1992, it was decided to abolish Part II - Occupational Health and Safety Commission, from the Victorian Occupational Health and Safety Act 1985, and in so doing eliminated the role and operation of the Commission. The Commission's functions in relation to occupational health and safety were to provide independent policy advice to the government; advise health and safety representatives, employers, unions and members of the public; provide assistance in establishing advisory committees; invite public comment on all proposed regulations and codes of practice; and the publication and dissemination of occupational health and safety information. One important function was to promote education and training, and approve courses in

occupational health and safety. As a direct result, the Victorian Trades Hall Council Occupational Health and Safety Training Centre received grants to operate weekly educational training programmes for health and safety representatives at levels 1 and 2. Further, they ran a number of half day seminars on hazard prevention and detection. The training unit consisted of five full-time trainers, who developed and presented curriculum material on occupational health and safety on a permanent basis for Melbourne, and county Victoria health and safety representatives.

Since the change of government there has not been any funding granted to the above centre for the continuation of training for representatives, nor has there been funding for non-union workplace representatives. This was one of the Commission's major responsibilities. However, this lack of funding is not surprising, according to Prevost, as the Liberal Party and many employers held the view that expenditure on health and safety was an entire waste, and that the matter should be left solely to management rather than on a consultative basis with unions.(126) Mr. Kennett made similar accusations as Leader of the Opposition with regard to the 1984 Occupational Health and Safety Bill -

126. Interview, Prevost, R., op. cit.

The Bill is nothing more or less than an attempt at a massive transfer of industrial and commercial control of the workplace to the trade union movement.(127)

Kennett also referred to the union appointment of health and safety representatives, inferring that they would feed on existing prejudices relating to unions and the concept of careless workers. He was strongly opposed to paid leave for health and safety representatives(128), and the idea that employers could face enormous fines or even imprisonment and in turn lose the final say on how to conduct and run their own businesses.(129)

It appears that the Victorian Act is now starting to slowly disintegrate with the abolition of the role of the Commission, It is too early at this stage to see the overall effect of this action, although changes have already been made to the Victorian WorkCare scheme with regard to compensation payments, and it is interesting to note that the Kennett government has renamed WorkCare to WorkCover.

127. Parliamentary Debates, Mr. Jeff Kennett, Legislative Assembly, 29 February, 1984, p.2830.

128. *ibid*, p.2832.

129. *ibid*, p.2830.

CHAPTER 7

CONCLUSION

Prior to the Victorian Occupational Health and Safety Act 1985, the Victorian Trades Hall Council conducted Health and Safety Representatives training programme over either a three or five day period, although the number of participants released from industry on full pay was minimal. However, from 1983 to 1985 health and safety programmes did operate and according to Ken McLean there was a small number of employers who saw the great advantages of having a participative approach to health and safety in their industries.(1)

The 1985 legislation in Victoria made provision for representatives to have a role in the monitoring of health and safety practices and standards at the workplace. As the same time representatives received a week's training on full salary by a designated trade union provider of occupational health and safety training or with a non-union training provider - the Occupational Health and Safety Authority (OHSA). Both courses covered similar material and were structured along the same guidelines of health and safety at work, the nature of health and safety hazards at work, health and safety legislation, guides and regulations, group work exercises, health and safety regulations, workplace inspections, hazard identification, workplace

1. Ken McLean was Programme and Training Officer, Occupational Health and Safety Unit, Australian Council of Trade Unions, prior to 1986. Interview conducted September, 1992.

visits, skills for safety delegates, inspection reports, information services on health and safety grievances and negotiating exercises on health and safety grievances.(2)

The National Occupational Health and Safety Commission established two standing committees to address questions related to training during 1985. The Industry and Commerce Training Standing Committee and a Special Education Standing Committee. At the same time the ACTU Occupational Health and Safety Policy stated that education and training in accident prevention and occupational health needed to assume greater importance in schools, the workplace, the community in general, and trade union training.(3)

The Occupational Health and Safety Initiatives Programme was a grant scheme for initiatives that enhanced the preventative approach to health and safety. The programme's main emphasis was on workplace prevention of injury and disease. Funding was also provided for projects that promoted awareness of health and safety issues in the workplace, particularly in those areas presenting a high risk to workers.(4)

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2. Victorian Trades Hall Council - Occupational Health and Safety Training Programme 1985-1993.
 3. McLean, K.G., "The Role of Training in the Trade Union Approach to Occupational Health and Safety", in Proceedings of the 1985 V O H & S Convention, Monash University, Melbourne, August 20-22.
 4. Occupational Health and Safety Authority, 1991 Status Report.

From 1990-91 the Occupational Health and Safety Initiatives Programme allocated to external projects the amount of \$2,132,410. In all, some thirty-one projects received funding, totalling a grant allocation of \$1,972,410. The remainder of the funds was expended on administration, and by 30 June, 1991, \$1,664,683 of the \$2,132,410 had been expended. There was a broad spectrum of preventative approaches that received funding, which included employing occupational health and safety officers, developing occupational health and safety curriculum and educational resources, facilitating risk management and workplace audits, assisting the development of occupational health and safety standards, inter-agency broad-based projects, developing strategies to address the occupational health and safety problems of special interest groups, and finally, a major area of concern, the training of health and safety representatives and the encouragement of industry to develop occupational health and safety courses and services.(5)

The above funding was on a tripartite basis, which included employers and employer associations, the union movement under the umbrella of the Trades Hall Council, and OHSA which represented the Victorian Labour Government. All three groups worked towards developing

training programmes in workplaces, and/or educational situations. Computer-based training was steadily being developed, and a telephone advice service was operational. The target areas of health and safety encompassed workplaces, educational institutions, community services, unions, employer bodies, WorkCare, and job re-design programmes, and the OHSa took pride in the fact that they had participated in tremendous changes, which were regarded as progressive and innovative. Health and safety was perceived to be part of everybody's agenda in Victoria, and through enforcement of the Act, became inseparable from the best management practices and strategies.(6)

After the Cain Labor Government won office in 1982 there has been a very noticeable change in industrial democracy in Victoria. The new government moved hastily to establish a more consultative and participative style of operation than its conservative predecessor had. Legislation was enacted which set in place guidelines for greater worker involvement in decision-making on occupational health and safety. The Victorian Government also stated that it encouraged the introduction of industrial democracy and was eager to see all Victorians become aware of the alternative strategies, processes

6. ibid.

and advantages to be gained.(7) According to Davis, the areas most suited to industrial democracy in the workplace are health and safety, industrial relations procedures, organisational and technological change, and training and development.(8) Biggins and Farr maintain that workers have the right to be involved in workplace decisions that affect them, as they are the ones who suffer ill-health, injury or death as a result of poor conditions.(9)

The scenario changed dramatically when the Kennett Government gained power in Victoria in October 1992 and abolished Part II of the Act, the Occupational Health and Safety Commission (mentioned previously in Chapter 5), with the power and function of the Commission now transferring to the Department of Business and Employment. Britnell views the coalition's amendments as intending to give the public and unions the impression that little or nothing at all will change, however he believes this is a gross misrepresentation of reality in that the following

7. Department of Employment and Industrial Affairs, Industrial Democracy in the Victorian Public Sector, Melbourne, Government Printer, 1985, p.19.
See also Davis, E.M., "Worker Participation in Decisions on Occupational Health and Safety in Australia", in The Journal of Occupational Health and Safety - Australia and New Zealand, 1986, 2(5).

8. *ibid.*

9. Biggins, D.R., and Farr, T.H., "Occupational Health and the Democratisation of Work", in The Journal of Occupational Health and Safety - Australia and New Zealand, 1988, 4(3).

has occurred, and will continue to occur.(10) Unions and workers will not have an input into occupational health and safety concerns in Victoria, and the tripartite body will cease to exist. Decisions relating to health and safety standards, prosecutions, issuing of improvement and prohibition notices, the approval of training courses, information strategies and research, is being made by department bureaucrats. The Coalition's appointment of the Employee Relations Commission to preside over disputes that relate to all notices, payments regarding workplace stoppages under Section 26 of the Act, and the right of representatives using the assistance of health and safety professionals, is biased against workers.(11)

The change in the legislation has brought to an end over seven years of constructive and successful tripartite activity by the Commission. While the rest of Australia is moving rapidly to embrace national uniformity of standards through tripartite consultation, Victoria is taking a huge step backwards.(12)

It appears that the only groups who may benefit from the Coalition's decisions will be the employers.

10. Britnell, I., "Occupational Health and Safety" in Divisional News, Australian Federated Union of Locomotive Enginemen, Victorian Division, Vol.1, Issue 4, November 1992.

11. *ibid.*

12. *ibid.*

The occupational health and safety legislation was based on the notion of participative workplace bodies - unions and employers - with all health and safety decisions being formulated on the shop floor. The major concern here is that Codes of Practice and Regulations could now be developed by the Kennett Government to meet whatever agenda it wants and, without going through a participative body.

The ACTU requested the Occupational Health and Safety Committee members to review and comment on a number of workplace health and safety strategies. The recent developments of occupational health and safety in the Uniformity Programme is one such strategy that the ACTU claims has been influenced by the dramatic change of political persuasion and pressure from the state government. Changes in the Uniformity Programme will have a dramatic effect on the minimal level of protection in workplaces, resulting in workers' health being put in jeopardy.(13)

Discussions took place between Trades Hall Council representatives and Roger Pescott, the Minister for Industry Services, during May 1993. Pescott examined the mooted changes to the Occupational Health and Safety Act,

13. Australian Council of Trade Unions, "Draft Discussion Paper - Options for ACTU OHS Strategies", Circular No.172/1993, 26 April 1993.

and Regulations, with his stand suggesting the following areas as needing change.(14) Licensing may not be required for the removal of low risk asbestos, and changes are proposed for Noise Regulations with regard to new plant and new workplaces. The previous government and unions had agreed to 85dB(a) for new plant and equipment by July 1994, but this date has now been put back to July 1997, and the noise level altered to 90dB(a).(15) The proposed amendments to the Act are to be brought in during the Spring 1993 (September-December) session of parliament. The Minister has stated that the proposed changes are in the interest of public perception, and that the provisions of Part IV of the Act, which related to designated work groups and occupational health and safety representatives' elections, will be amended. According to Pescott, this will allow non-union workers to participate equally with union workers to become representatives of their designated work groups.(16) The Minister's idea is to bring the Occupational Health and Safety Act into line with the Employee Regulations legislation.

14. Victorian Trades Hall Council, "Health and Safety Report", Circular No. MT/JH 269/93, 20 May 1993.

15. The term dB(a) is used to express noise levels in ratios of ten, also referred to as decibels. A safety representative needs to be aware that the noise level of 93dB(a) is actually twice as intense as the noise of 90dB(A), and therefore twice as damaging to health.

16. "Health and Safety Report", op. cit.

In examining the Asbestos Regulations, the Victorian Occupational Health and Safety Commission spent six years consulting with all interested groups before formulating the 1992 Asbestos Regulations. The Kennett government is now proposing to amend these regulations in 1995, resulting in licensing being abolished for the removal of asbestos cement products.(17) Unlicensed operators are already working in Victoria, according to Bill Oliver from the Building Workers' Union, who cites the situation of asbestos being thrown down on the streets from ceilings and walls at the Portland Hospital during normal working hours.(18) The changes to the Asbestos Regulations will pave the way for unscrupulous employers to ignore their basic duties in providing a health and safety workplace, and allow inexperienced persons to become asbestos removalists.

In a recent prosecution the court heard that an employee of Bowater Deeks Pty. Ltd. had two fingers amputated when caught in power driven rollers. The employer was found to have failed to provide a safe plant and system of work, and insufficient information,

17. Towler, M., "Government Amendments to OHS Asbestos Regulations, Report to Trades Hall Council, 13 May 1993.

18. Interview with Bill Oliver, Occupational Health and Safety Representative, Building Workers' Union, May 1993.

instruction, training and supervision. The magistrate commented that parliament took a very serious view of contravention of the legislation because of the "horrible repercussions of breaches". He added that it was an unfortunate event that an injury in the workplace had to happen before safety was dealt with. The conviction resulted in a fine of \$8,800 plus \$1,200 costs.(19) According to Towler, the magistrate's comments provide a graphic contrast to the draft Risk Management Regulations the government proposes with WorkCover. Under the proposed Risk Management Programme, employers are to take the necessary steps after an injury occurs in the workplace to reduce as far as practicable the risk of subsequent injuries of a similar nature occurring.(20)

The coalition government has cut funding to the Trades Hall Council for operation and maintenance of its Occupational Health and Safety Training Unit. In 1992 the Trades Hall received approximately \$400,000 for safety training, and according to Halfpenny, the Victorian Employers Chamber of Commerce and Industry received a similar amount for the training of management and supervisors - their funding is still maintained.(21)

19. Recent prosecutions Occupational Health and Safety Legislation, Number 1/1993. Cases heard 01 January 1993 to 31 March 1993.

20. Health and Safety Report, op. cit.

21. Ballarat Courier Mail, 7 November 1992, p.12.

The government is continuing to block union efforts to provide training courses for workplace health and safety representatives, however the Training Centre is still operational despite a lack of funding. Training is being provided on a fee-for-service basis, or user pays situation. Many employers are prepared to pay a nominal fee of \$150 per representative, and according to Cameron, a senior Occupational Health and Safety Trainer, a small number of large organisations have complained about the service fee, and it is alarming to note that some unions have complained, on behalf of their employers, seeking to have the fee waived.(22) The Training Centre is continuing to operate under the above concept, and receives Commonwealth funding of \$400 per representative to operate COMCARE courses (Commonwealth Occupational Health and Safety Act).

Cameron and Sicluna have said that since 1985 there appears to have been a definite reduction in industrial injuries as workers are more aware of health and safety issues in the workplace than ever before in the history of Victoria.(23) There are a number of reasons for this, according to Cameron and Sicluna. Victorian unions have

22. Interview with Gary Cameron, Senior Occupational Health and Safety Training Officer, Trades Hall Council, Melbourne, May 1993.

23. Interview with Gary Cameron and Annie Sicluna, Training Officer, Trades Hall Council, Melbourne, May 1993.

taken a protective approach towards occupational health and safety, no doubt brought about to an extent by recent changes to the legislation. The Australian union movement, through the ACTU, has made it very clear that occupational health and safety is an industrial issue which will be pursued through a number of channels, other than those provided by occupational health and safety laws, such as direct negotiation with employers, and through claims before industrial tribunals.(24)

The structuring of specific occupational health and safety provisions within awards and industrial agreement has raised some problems, given the jurisdictional complexities of the Victorian industrial relations system. Additional to this is the great commitment of resources to prepare and advocate a detailed log of claims. However this is not to say a solution cannot be achieved. Awards and agreements can make an important contribution towards augmenting statutory requirements.(25) Unions may need to flex some industrial muscle if occupational health and safety standards and codes of practice are to be embraced in negotiations designed to secure cost reductions and efficiency improvements within Victorian industry.

24. Quinlan, M., and Bohle, P., Managing Occupational Health and Safety in Australia: A Multidisciplinary Approach, Griffith University, MacMillan, 1991, pp.413-4.

25. *ibid.*, p.414.

Many unions have applied for accreditation from the Victorian Health and Safety Authority to operate their own training courses, all to no avail. One such union is the Finance Sector Union which, according to Prevost, National Health and Safety Officer, has met all requirements, but still all requests for training have been rejected. The result is cancellation of training for twenty-five representatives who need workplace health and safety training.(26) A number of unions are echoing similar themes, that they have allocated time, money and resources for the implementation of comprehensive health and safety strategies, which they have not been permitted to operate. Unions have accused the government of demonstrating a double standard in the arena of occupational health and safety, in that it has issued a statement indicating that it is serious about taking pro-active steps to minimise workplace injuries, but by the same token it has unashamedly prevented union employees from attending health and safety training programmes which seek the same goals and objectives the government says it is pursuing, the creation of a safer work environment. At the same time the need for occupational health and safety training and safety workplace programmes are now even more paramount than before, taking into consideration the extremely limited post-injury compensation options of WorkCover.

26. Interview with Roy Prevost, National Health and Safety Officer, Finance Sector Union, May 1993.

In a recent publication of the Federation News it was reported that manslaughter charges have been laid against an employer, a managing director of a company (unnamed), by the Occupational Health and Safety Authority. The employer was said to have failed to maintain adequate safety standards in the workplace, and if found guilty could face a gaol term.(27) This is the first time that the Victorian Occupational Health and Safety Authority has taken an employer to court, and hopefully it will not be the last time. The Authority needs to flex its muscle if its aim is to combat irresponsible employers with poor safety practices installed.

In a recent press statement Martin Ferguson, President of the ACTU, stressed the ACTU's concern over the unacceptable rate of injuries and deaths which occur in Australian workplaces. He said that one worker is injured in an Australian workplace every minute of every day of the year, and that five workers die at work each day.(28) These horrific figures could easily be prevented if employers, employees and unions were to work together to minimise safety risks. Additionally, Australia spends over \$5 billion per annum on workers'

27. Federation News October 8, 1993, p.9.

28. op. cit., p.9.

See page 61. It was reported in The Sun on 4 October, 1988, that eight workers died a week in industrial accidents. This number was reduced to five per week in 1993.

compensation costs, wages and medical costs not covered by levies, and this figure does not take into account hidden costs of accidents, product loss, a reduction in production and quality, accident investigation and reporting, claims management and higher insurance premiums, additional training, possible fines, industrial unrest and the loss of skills of the injured workers. Industry and management are both beginning to recognise that occupational health and safety is now a vital management tool in award restructuring, total quality management, and increasing industry efficiency.(29)

An estimate of the total cost of occupational health and safety, both direct and indirect costs, would be in the vicinity of \$20 billion per annum.(29) In Victoria alone 30,000 workers are seriously injured each year, and someone will die each week while performing their job.(30) These figures highlight an appalling record for any government, and yet the Kennett state government has further undermined the tripartite approach to occupational health and safety, with the possible result of injuries and deaths in Victorian workplaces escalating. The 1985 Act was built on extremely clear principles that government, unions and employers should unite and work

29. Edwards, K., and Trewin, P., et. al., "Train Safe Case Study", Occupational Health and Safety Training Program paper presented as part of a Graduate Certificate of Enterprise Management, Swinburne University, 1993.

30. *ibid.*

together to foster a more harmonious approach to reduce safety risks in Victorian workplaces. However, the present government has demonstrated a complete disregard for the trade union movement's commitment to occupational health and safety over the past decade. There have been a number of amendments to the Occupational Health and Safety Act 1985, and in Section 4 the definition of "trade union" has been repealed.(31) Wall states that without the involvement of unions written into procedures, employees are left wide open to the situation of unscrupulous employers manipulating the work process, and more significantly, who is elected as health and safety representatives and who is on workplace health and safety committees to examine workplace safety standards.(32)

The original Act instituted active consultation as a way of solving disputes. If consultation failed the representative was empowered to issue a Provisional Intention Notice, and an inspector could then be called into the workplace to offer advice, and if need be, rectify the situation. The worry now to unionists is that as employers do not have to deal with union-elected health and safety representatives, workplace problems could be compromised.

31. "Occupational Health and Safety (Miscellaneous Amendments) Bill 1993", Second Reading Speech Notes, October 1993.

32. Federation News, op. cit., p.9.

In other changes to the Act, Section 25(1) stipulates that employees must co-operate with their employer with regard to actions taken by the employer to comply with any requirement imposed under the Act(33), and Section 31(2)(c) now only requires an employer to consult with the health and safety representative on all proposed changes at the workplace if practicable. Still on Section 31, sub-section (1)(a) of the original Act empowers a health and safety representative for the purpose of health and safety at the workplace to inspect the whole or part of the workplace at any given time after giving reasonable notice to the employer or immediately in the event of an accident, hazardous situation, or immediate risk to the health and safety of any person.(34) This section has now been amended to allow representatives to inspect only their designated work area, and not the workplace as a whole. What happens if the health and safety representative of a particular designated work group is absent from work, or has been moved to another section of the workplace? Who inspects an injury site if an accident has occurred - the employer only, or a health and safety representative from a different designated work group?

33. "Occupational Health and Safety (Miscellaneous Amendments) Bill" 1993, Section 4.

34. Occupational Health and Safety Act 1985, Section 31.

Since the change of government in Victoria there has been a genuine air of uncertainty over the future of the Occupational Health and Safety Act. As has been mentioned previously, Victoria's legislation adopted the most full-blooded version in Australia of the British Act particularly in the area regarding the powers exercised by health and safety representatives. This situation appears to be changing as union participation in the election of health and safety representatives, their role, and the provision of training, are all areas which have been attacked by Kennett's conservative government. Originally the Occupational Health and Safety Act raised the awareness levels of employers and employees, and succeeded in fostering harmonious attitudes towards safety in the workplace. As a result the Occupational Health and Safety Authority promoted health and safety and training for Victorian industries, established Codes of Practice, safety standards and multi-lingual information on safety articles and posters, as well as providing interpretation for employers. These areas have all been abolished, and as for safety training for representatives, the opportunities for education for the health and safety representative are diminishing at a rapid rate.

Training and the technical knowledge needed by health and safety representatives is of the most vital importance if they are to recognise the dangers that may be present in a workplace. As mentioned previously, employers tend

to view health and safety as their own prerogative, and safety rules have been developed to protect workers from themselves. This theory was developed in the belief that accidents were caused by careless workers, and that management was not to blame. As a result, management took control and alienated themselves from consultation with unions and the work force over health and safety issues. However, during the mid-seventies unions, management and governments began to show some interest and concern over occupational health and safety.(35) The increasing development of new technologies, including the handling of extremely hazardous chemical substances, still left the worker with little or no training to combat the new dangers which were constantly being presented. This situation, which was rectified by the 1985 legislation and its emphasis on training, is now poised to return with a vengeance, as a result of the changes occurring under the Kennett government, and in particular the abolition of training requirements.

Training in Victoria in occupational health and safety was recognised by other states as their model, a beacon so to speak, but now the light is rapidly fading. Such training should be viewed by the government

35. Australian Committee on Training Curriculum,
"Occupational Health and Safety Program",
Holmesglen College of TAFE, 1992.

as an integral component of workforce training, and as individuals move employment, or jobs are re-designed to take into account changing work practices, a greater emphasis is needed to give the worker the latest knowledge available in occupational health and safety.

Unfortunately it appears that Victoria is about to re-enter the pre-1985 bad old days of health and safety.

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APPENDIX 1

his Indenture Witnesseth That John Greenward
Dickenson Son of Matthew Dickenson of Newton in
the County of Norfolk

doth put himself Apprentice to Robert Parley Taylor of Liverpool

POWELL



3 Pence
Pr Pair.

G. R.

Apprentices Indenture.

to serve from the
King's Day of March 1829
unto the full End and Term
of Five Years from thence first following to be fully complete and ended
DURING which Term the said Apprentice his Master faithfully shall serve his Masters

keep his lawful commands everywhere gently do he shall do no Damage to his said Master nor sell to be
done of others but to his Power shall do as forthwith give Warning to his said Master of the same. he
shall not waste the Goods of his said Master nor lend them unlawfully to any he shall not commit
Fornication nor contract Marriage with any woman nor shall he unlawfully to any he shall not commit
other unlawful Games whereby his said Master may have any loss With his own Goods or others
during the said Term without Licence of his said Master. he shall neither buy nor sell. he shall not
have Taverns or Play houses nor absent himself from his said Master's service Day or Night unlaw
fully But in all things as a faithful Apprentice he shall behave himself towards his said Master and
all his during the said Term AND the said Robert Parley Taylor his Master's Consent of his

of Eight Years in the most honest
his said Apprentice in the Art of a Taylor
he can shall teach and instruct or cause to be taught and instructed fully by the said Apprentice
during the said Term
the first two years
the third year
the fourth year
the fifth year
the sixth year
the seventh year
the eighth year
the ninth year
the tenth year
the eleventh year
the twelfth year
the thirteenth year
the fourteenth year
the fifteenth year
the sixteenth year
the seventeenth year
the eighteenth year
the nineteenth year
the twentieth year
the twenty first year
the twenty second year
the twenty third year
the twenty fourth year
the twenty fifth year
the twenty sixth year
the twenty seventh year
the twenty eighth year
the twenty ninth year
the thirtieth year

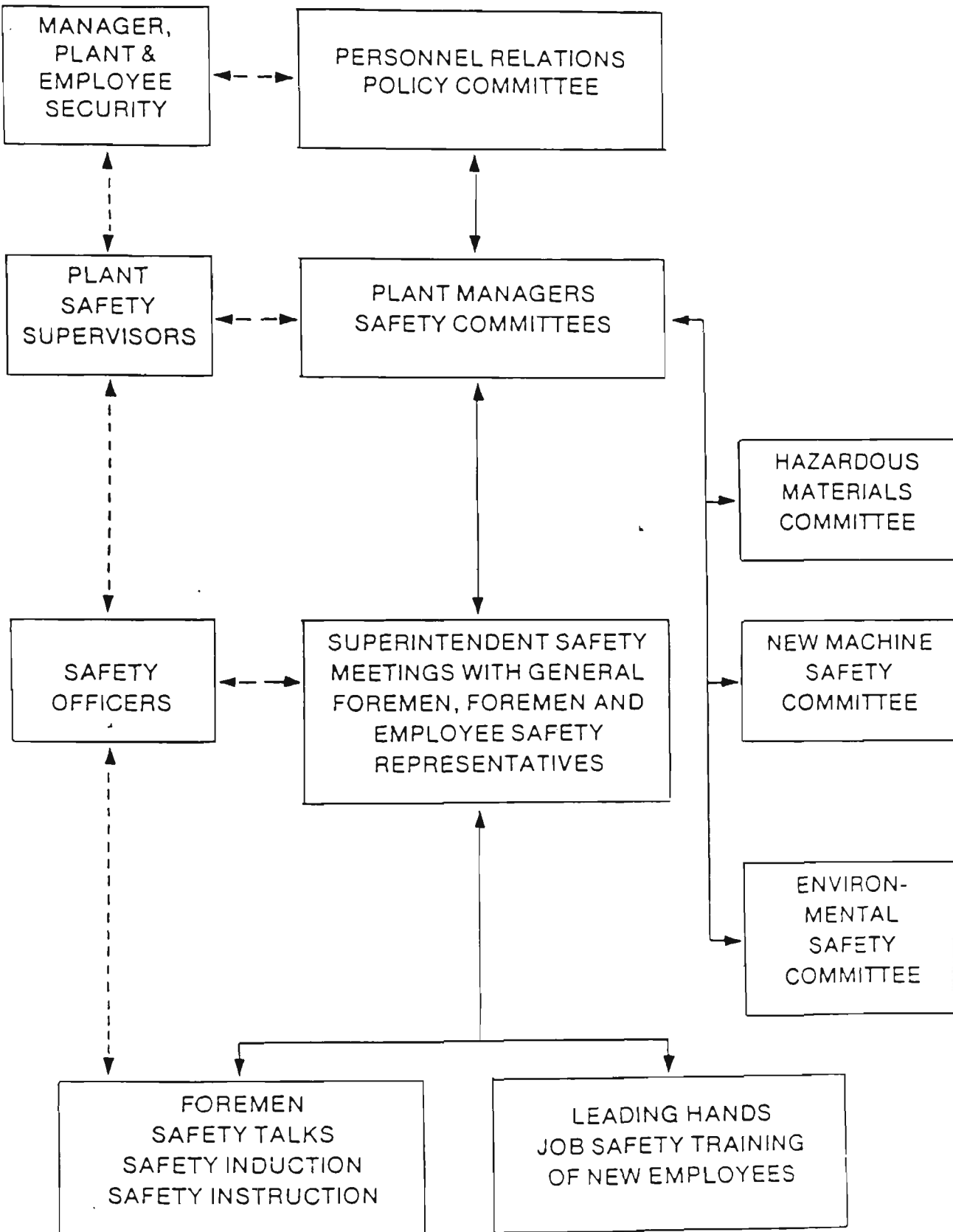
18. The Indenture Covenant Article or Contract must bear date the day it is executed & what
Money or other thing is given or Contracted for with the Clerk or Apprentice must be
inserted in Words at Length otherwise the Indenture will be void. the Master or
Apprentice forfeit fifty Pounds & another Party & the Apprentice be charged to
follow & Trade or be made free.

John Greenwood Dickenson.
Matthew Dickenson
Mark
R Parley

Robert Roberts
George Mason

APPENDIX 2

GM-H SAFETY STRUCTURE



APPENDIX 3



Safety Data Sheet

INDUSTRIAL CHEMICALS GROUP

ICI Australia Operations Pty Ltd
1 Nicholson Street,
Melbourne, 3000 Tel: 03-665 7111
Emergency: 008-033111 (All Hours)

Product Name TRICHLOROETHYLENE

CDS: 10229

ISSUED: 05/88

PAGE: 01

U.N. NO: 1710
HAZCHEM: 2Z

HAZARD : 6.1B POISONOUS (HARMFUL)
POISON : S6

IDENTIFICATION & PHYSICAL DATA

OTHER NAMES

Acetylene trichloride
Tri
TCE

CAS NUMBER

79-01-6

MOLECULAR FORMULA

C₂H-Cl₃

USES

Solvent

PHYSICAL PROPERTIES

Specific Gravity (15 C) : 1.470
Rel Vap Density : 4.540 Boiling Point : 87.0 C
Vap Pressure (20 C) : 7.67 kPa
% Volatile by volume: 100

Colourless, volatile liquid with chloroform-like odour. Slightly soluble in water. Miscible with most organic solvents.

Can decompose to dichloroethylene, phosgene, carbon monoxide and chloroacetylenes on contact with alkalis. Photo-reactive.

HEALTH HAZARD INFORMATION

HEALTH EFFECTS

Harmful if inhaled or swallowed. Effects can be potentiated by alcohol and effort.

SKIN: Contact with skin may result in irritation. Will have a degreasing action on the skin.

EYES: A severe eye irritant.

INHALATION: Vapour is irritant to mucous membranes and respiratory tract. Inhalation of vapour can result in headaches, dizziness & possible nausea. Inhalation of high concentrations can produce central nervous system depression, which can lead to loss of co-ordination, impaired judgement and, if exposure is prolonged, unconsciousness.

INGESTION: Ingestion can result in nausea, vomiting and other effects similar to those caused by inhalation.

Prolonged exposure to high concentrations may result in adverse effects on the heart, liver and kidneys.

Some data indicate carcinogenicity in mice but not rats after high oral



Safety Data Sheet

INDUSTRIAL CHEMICALS GROUP

ICI Australia Operations Pty Ltd
1 Nicholson Street,
Melbourne, 3000 Tel: 03-665 7111
Emergency: 008-033111 (All Hours)

Product Name TRICHLOROETHYLENE

CDS: 10229

ISSUED: 05/88

PAGE: 02

HEALTH EFFECTS

(CONT.)

dosing thus emphasising the need for care in handling the material.

FIRST AID

SKIN: Immediately wash away with plenty of soap and water. Remove ALL contaminated clothing. If swelling, redness, blistering or irritation occurs seek medical assistance.

EYES: Immediately irrigate with copious quantities of water for at least 15 minutes. Eyelids to be held open. Remove clothing if contaminated and wash contaminated skin. In all cases of eye contamination it is a sensible precaution to seek medical advice.

INHALATION: Remove victim from exposure - avoid becoming a casualty. For all but the most minor symptoms arrange for patient to be seen by a doctor as soon as possible, either on site or at the nearest hospital. Remove contaminated clothing and loosen remaining clothing. Allow patient to assume most comfortable position and keep warm. Keep at rest until fully recovered. If breathing laboured and patient cyanotic (blue), ensure airways are clear and have qualified person give oxygen through a face mask. If breathing has stopped apply artificial respiration at once. In the event of cardiac arrest, apply external cardiac massage.

INGESTION: Give water to drink. Avoid giving milk, oils or alcohol. If patient conscious induce vomiting. Use fingers in the throat or Ipecac Syrup APF. Place victim's face downwards, head lower than hips to prevent vomit entering lungs. Seek immediate medical assistance. Poison Information Centres in each State capital city can provide additional assistance for scheduled poisons.

ADVICE TO DOCTOR

Treat symptomatically. Do not administer sympathomimetic drugs as they may cause ventricular arrhythmias.

TOXICITY

Oral LD50 (rat): 7193 mg/kg

Inhalation Lowest Lethal Concentration (rat) : 8000 ppm/4 hr

Oral Lowest Lethal Dose (human) : 7000 mg/kg

Inhalation Lowest Toxic Concentration (human): 1100 ppm/8 hr

Inhalation Lowest Toxic Dose (human) : 812 mg/kg

Human Inhalation: 400 ppm will produce coughing and lightheadedness after 20 mins.

SKIN (rabbit): 500 mg/24hr - Severe

EYES (rabbit): 20 mg/24hr - Severe

Oral dosing studies in mice at high concentrations produce various tumouragenic effects including hepatocellular carcinomas. This effect is not observed in rats. Inhalation studies in rats, mice and hamsters reported no tumour increase attributable to trichloroethylene. Studies in bacteria and yeast reveal that it is weakly mutagenic. Based on an assessment of available test data it is our opinion that this product does not present a carcinogenic risk to humans in normal work exposure.



Safety Data Sheet

INDUSTRIAL CHEMICALS GROUP

ICI Australia Operations Pty Ltd
1 Nicholson Street,
Melbourne, 3000 Tel: 03-665 7111
Emergency: 008-033111 (All Hours)

Product Name TRICHLOROETHYLENE

CDS: 10229

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TOXICITY (CONT.)

Over exposure may however lead to adverse effects on the CNS, heart, liver and kidneys.

PRECAUTIONS FOR USE

EXPOSURE LIMITS

Threshold Limit Value (TLV*): 50 ppm
270 mg/m3

As published by the National Health & Medical Research Council.

*TLV is the time weighted average concentration of the work atmosphere for a normal 8-hour work day and a 40-hour work week, to which nearly All workers can be repeatedly exposed day after day without adverse effect.

These TLVs are issued as guidelines for good practice. All atmospheric contamination should be kept to as low a level as is practically possible. These TLVs should not be used as fine lines between safe and dangerous concentrations.

Odour threshold approx 200 ppm.

VENTILATION

Maintain concentration below recommended exposure limit. Use with local exhaust ventilation or while wearing organic vapour respirator. Vapour heavier than air - prevent concentration in hollows or sumps. DO NOT enter confined spaces where vapour may have collected.

PERSONAL PROTECTION

ICI Protective Equipment Code : H

Use good occupational work practice. Avoid all skin and eye contact.

Wear impervious gloves and chemical goggles. Use with adequate ventilation. If inhalation risk exists wear respirator or air-supplied mask. Always wash hands before smoking, eating, drinking or using the toilet.

FLAMMABILITY

Non flammable.

SAFE HANDLING INFORMATION

STORAGE AND TRANSPORT

UN No: 1710 Packaging Group: 3

Classified as a 6.1B (POISONOUS (HARMFUL)) Dangerous Substance for the purpose of transport. Refer to State Regulations for storage and transport requirements.

Not to be loaded with oxidising agents (class 5) or foodstuffs.

The product is a Scheduled Poison (S6) and must therefore be stored, in accordance with the relevant State Poisons Act.



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Store in a cool place and out of direct sunlight to prevent expansion and possible drum rupture. At all times should be stored away from foodstuffs. Vent drums carefully. Store away from sources of heat or ignition. Keep containers closed at all times. Store away from oxidising agents, strong acids or alkalis. Because of high vapour density do not store in pits, depressions, basements or areas with no floor ventilation. Ensure that product is not used in the vicinity of naked flame or hot surfaces. Do not lean over vessels containing liquid or vapour.

SPILLS

Increase ventilation. Work up wind. Wear full protective equipment to prevent skin and eye contamination and inhalation of vapours. Stop leak if it is safe to do so. Contain - use sand and earth. Prevent run-off into drains or waterways. Use absorbent (soil or sand, sawdust, inert material, vermiculite). Collect and seal in properly labelled drums for disposal. If contamination of sewers or waterways has occurred advise Emergency Services.

DISPOSAL

Refer to State Land Waste Management Authority. Suitable for incineration by approved agent.

FIRE/EXPLOSION HAZARDS

Non flammable. Vapourises rapidly on heating and contact with flame or hot surfaces may produce toxic decomposition products containing hydrogen chloride and phosgene. Keep containers cool with water spray to prevent expansion and possible rupture of containers. Fire fighters to wear self-contained breathing apparatus.

EXTINGUISHING MEDIA: Water fog, foam, carbon dioxide, dry chemical powder, BCF.

OTHER INFORMATION & REFERENCES

APPENDIX 4



VTHC OCCUPATIONAL HEALTH AND SAFETY TRAINING CENTRE

Trades Hall, Lygon Street, Carlton South 3053

INTRODUCTORY COURSE FOR HEALTH AND SAFETY REPRESENTATIVES

PRE-COURSE EXERCISE

PLEASE COMPLETE THIS SHORT EXERCISE AND BRING IT WITH YOU ON THE FIRST DAY OF THE COURSE.

PART 1 — SAFETY HAZARDS

Safety hazards usually cause an injury which is of an immediate and violent nature, an event marked in time and place. E.g. a worker's hand crushed in an unguarded machine. Accidents resulting from safety hazards may cause death or injuries such as burns, electric shock, cuts, bruises, sprains, broken bones and loss of limbs or eyesight. Some of the safety hazards in your workplace may relate to: (tick appropriate boxes)

LIGHTING ☐

FIRE ☐

MACHINERY ☐

PRESSURE VESSELS ☐

HAND TOOLS ☐

ELECTRICITY ☐

TRAFFIC CONTROL ☐

LIFTING/MANUAL HANDLING ☐

Make brief notes explaining why you consider ONE of these safety hazards to be a problem in your workplace.

PART 2 — HEALTH HAZARDS

Ill health may arise from exposure to hazards such as toxic chemicals, dust, noise, heat, vibration and radiation. Exposure may result in respiratory and lung disease, cancer or poisoning of other organs and a shortening of life expectancy. Unlike safety hazards the effects of health hazards may be hidden, they may build up over time and be irreversible.

Some of the health hazards in your workplace may relate to: (tick appropriate boxes)

NOISE ☐

CHEMICALS ☐

VIBRATION ☐

STRESS ☐

DUST ☐

HEAT ☐

RADIATION ☐

COLD ☐

Make brief notes explaining why you consider ONE of these health hazards to be a problem in your workplace.

PRE-COURSE EXERCISE**PART 3**

- a) Do you think accidents at work happen because workers are careless?

YES ☐ NO ☐

Give reasons for your answer:

- b) Do you think there is a conflict of interest between unions and management over health and safety issues?

YES ☐ NO ☐

Give reasons for your answer:

APPENDIX 5

QUESTIONNAIRE

**Employees/ Occupational Health & Safety
Representatives and Safety Officers**

INDUSTRY:

POSITION HELD:

PERIOD OF TIME:

Q1. Were employees trained in their specific jobs?

Q2. If so, how long was the induction program?

Q3. Was training ongoing, e.g. every six months, one year, etc?

Q4. Was the depth of training for employees in proportion to the skill, or danger, of their jobs, e.g. chemical handling, to protection provided no training?

Q5. Which areas had the greater accident rates?

Q6. Were employees sent back to work before complete rehabilitation?

Q7. Were employees given safety advice in their own language?

Q8. What did you think of the safety program?

Q9. What was the employee motivation toward work like?

Why?

Q10. Which factors mainly contributed to injuries, e.g. plant layout, safety equipment, philosophy toward safety, economic conditions, etc?

Q11. Did management show concern toward safety and related issues?

Q12. Was there disinterest in safety programs? Was there disinterest in training programs?

Q13. Was there interaction between top management, middle-level management and union officials on safety?

Q14. What were the major safety hazards?

Q15. What were the major health hazards?

Q16. Were any cost benefit studies undertaken toward OH & S?

Q17. Before the OH & S Act, 1985, were there more, or less, accidents?

Why?

Q18. Which areas in the workplace appeared to be the most hazardous?

Q19. Was more emphasis placed on and additional training undertaken in risky areas?

Q20. Were safety meetings run on a regular basis?

Q21. Were safety programs supported by workers?

Q22. Was there a constant flow of communication on safety, hazards, etc?

Q23. How were accidents monitored?

Q24. Was there a change in peer attitudes after the OH & S Act, 1985?

Q25. Was management hostile toward the OH & S Act, 1985?

Q26. Was there strong job satisfaction?

Q27. In your opinion, what do you think are the major reasons for industrial accidents?

[Please take into account, training, or lack of training; boredom; environmental factors; carelessness of the worker; carelessness of management; lack of health and safety programs; security of employment; redesigning of the workplace; no worker control over their own work]

[illegible]

APPENDIX 6

SAFETY HAZARDS

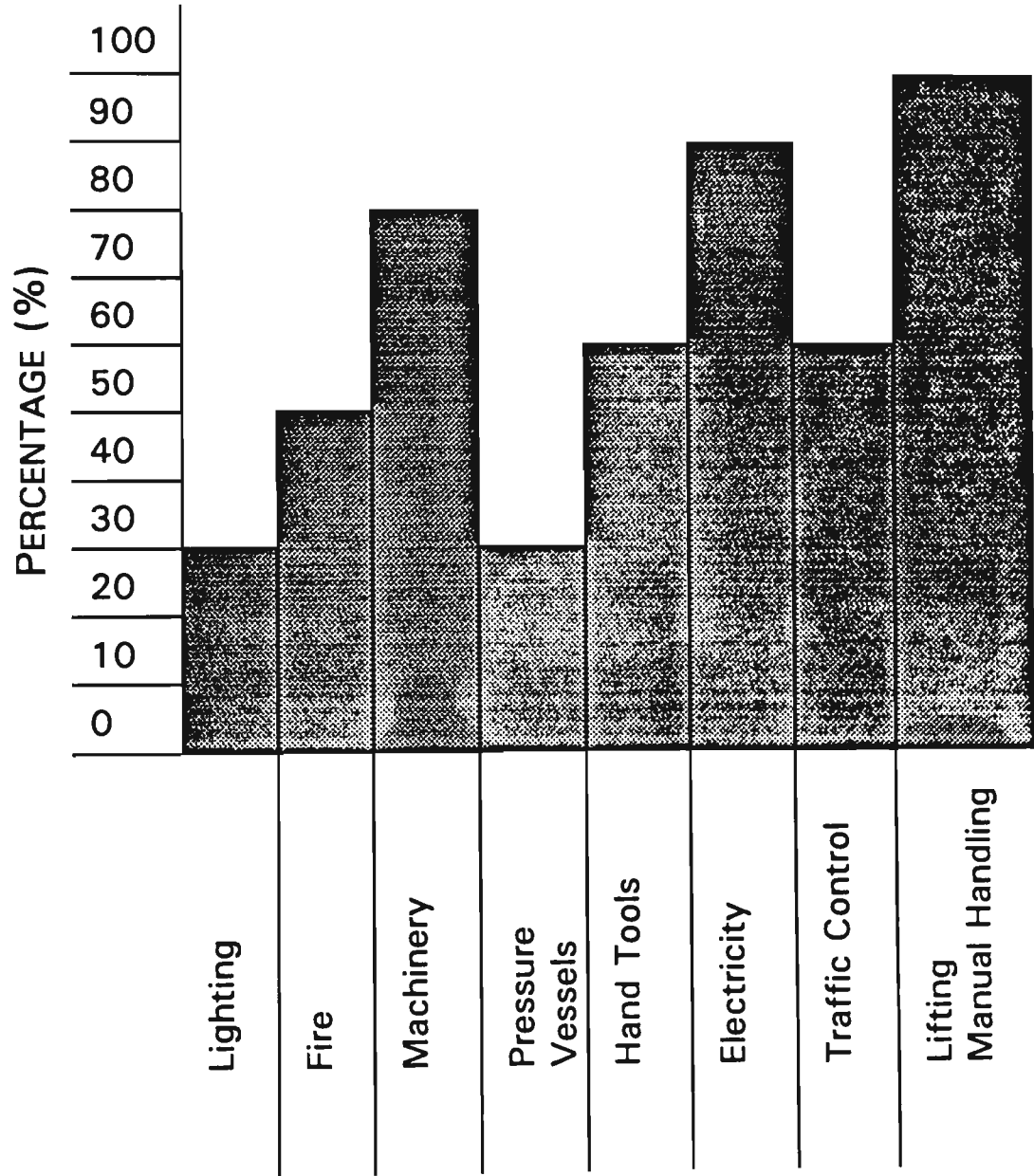


Fig. 1

HEALTH HAZARDS

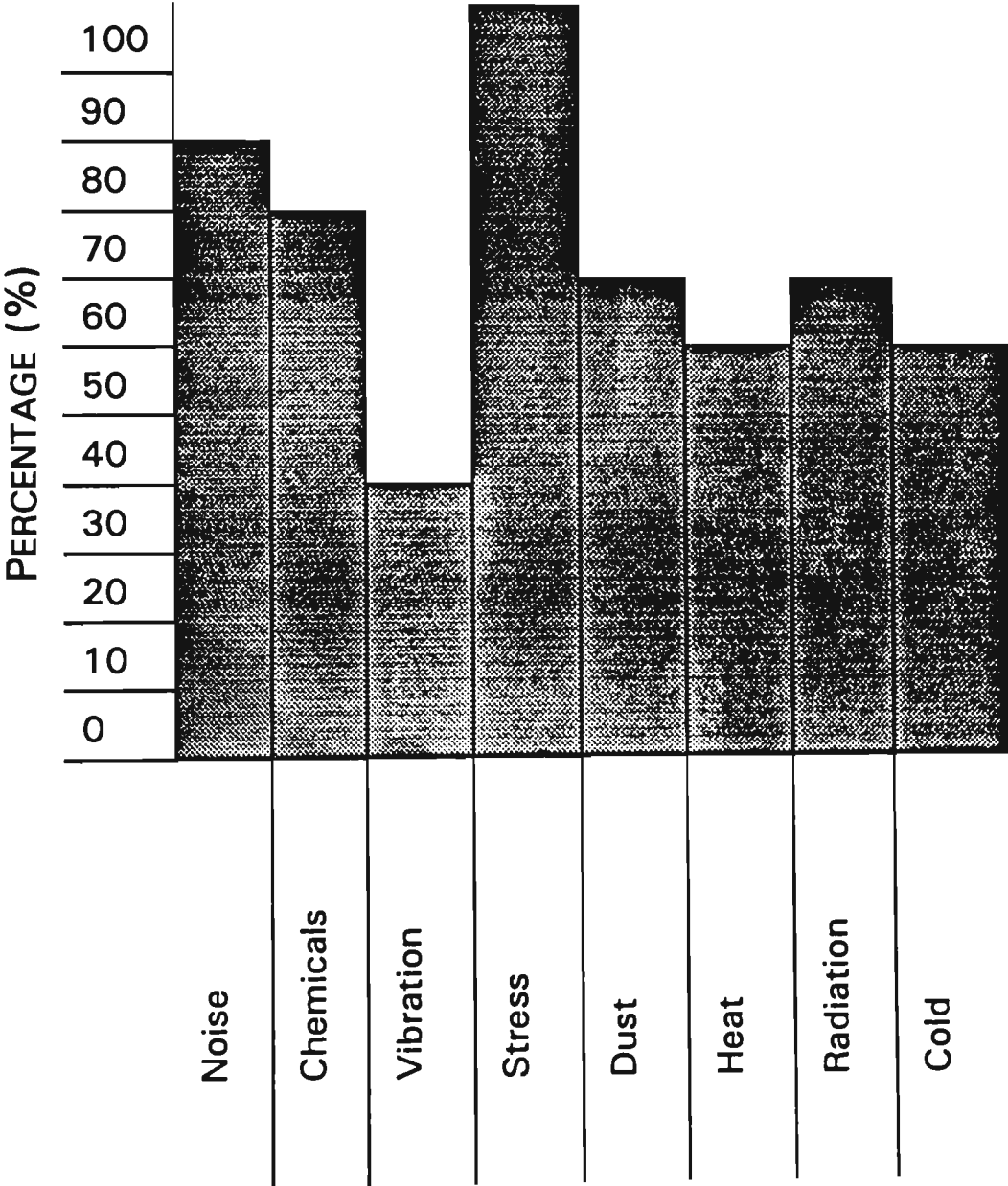


Fig. 2

The graphs in Fig. 1 and Fig. 2, Safety and Health Hazards, depict an average of the 150 interviewees.

As mentioned previously those interviewed were employed in manufacturing, education, public service, trade and process work. Some areas on the graph scored higher than others. An example of this is that the majority of persons came in contact with electricity, manual handling and felt some kind of stress in their daily working life.

Those areas which scored low, such as pressure vessels, fire, lighting and vibration, usually had little effect on outdoor workers, nurses, teachers and most public servants.

