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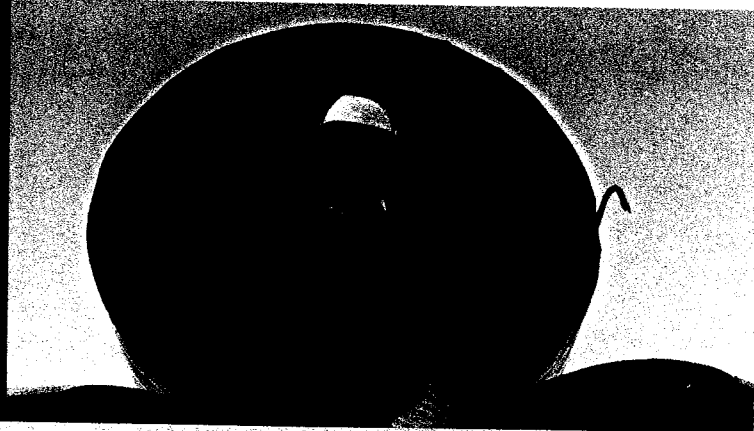
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Special issue:

Complexities in OHS regulation



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editorial

Complexities in OHS regulation

by **Liz Bluff,**
Neil Gunningham
and **Andrew**
Hopkins

Contemporary OHS regulation operates in a world of business and working life that is increasingly complex. To name just a few areas, there is complexity in the structure of business entities, in the relationships between those with real control over the organisation of work and those who perform it, in the nature of work, technology and risks, and in the information on which organisational decision-makers determine their response to OHS issues.

All of this poses particular challenges for OHS regulators, as well as for those being regulated. The articles in this special issue of the *Journal of Occupational Health and Safety* debate and address some of these issues of complexity.

One area of increasing complexity is the structure of corporations and corporate groups. This impacts on the liability for OHS offences. In particular, it raises issues concerning how those with real control over, and influence on, decisions that impact on OHS outcomes can be made legally responsible for them. In "OHS liability, corporate officers and corporate groups", Richard Johnstone and Therese Wilson examine the extent to which corporate officers can and should be held liable for corporate offences under OHS statutes. The article examines directors' duties under corporate law to show why specific provisions are required in OHS statutes to impose liability on corporate officers for OHS offences committed by corporations. A recent development in corporate officer liability under the Victorian *Occupational Health and Safety Act 2004*, which has the

Liz Bluff is a Researcher, Neil Gunningham is Professor and Director, and Andrew Hopkins is Professor and a Researcher, all with the National Research Centre for OHS Regulation at the Australian National University.

potential to address the extent to which responsibility for OHS offences extends beyond a corporate duty holder to other members of a corporate group, is discussed.

Recognising the complexity of OHS legal responsibilities, as well as the nature of work and risks, a crucial consideration in effectively protecting workers' health and safety is ensuring access to sufficient OHS knowledge, capability and expertise. Yet OHS support is largely a resource for larger firms that have in-house OHS advisers or contract services from independent providers. In "Improving the provision of OHS support in Australia", Liz Bluff questions the adequacy of Australian OHS regulation in providing for OHS support. Drawing on overseas experience, she challenges readers to consider the potential role of OHS regulation to enhance access to and provision of quality OHS support, with reference to the role and functions, organisation and funding, professional competence, quality and effectiveness of providers of this support.

Occupational health and safety regulation has become increasingly complex as different approaches to crafting legislation, as well as diverse enforcement strategies, are introduced into legislation. Against this backdrop, it is relevant to examine the evolution of different approaches and what might be "best practice". The mining industry, the subject of specific OHS legislation and enforcement in a number of Australian states, provides an interesting case study of developments in OHS regulation. As Neil Gunningham observes in "Best practice mine safety regulation: are we there yet?", mine safety regulation, which long lagged far behind "mainstream" OHS regulation, has now shifted to a point where, in some respects, it is substantially ahead. This article examines the new approach in Queensland, which involves "goal setting", risk management and requirements to

adopt hazard management plans that are integrated with holistic OHS management systems. The article then asks whether OHS regulation in that state is approaching best practice or whether further changes are needed to provide different strategies for duty holders with a variety of motivations and levels of sophistication.

Within organisations, competing and conflicting interests can pose dilemmas for those making decisions that impact on OHS performance. One such dilemma concerns an organisation's response to information about recognised safety problems. In "A corporate dilemma: to be a learning organisation or to minimise liability", Andrew Hopkins asks whether organisations should seek out such information and learn from it (so as to reduce the risk of accidents), or whether they should suppress such information in the hope that this may reduce the risk of litigation. Using the explosion at Esso's Longford gas plant in 1998 as a case study, this article argues that suppressing "guilty knowledge" creates organisational learning disabilities, does not provide protection from fines or compensation claims (at least in the Australian legal context), and may be damaging to a firm's public profile.

The final article in this special issue takes up the challenge of supporting organisations through the complexities of the OHS legislative and enforcement environment. In "Do self-assessment tools assist the effectiveness of performance-based OHS legislation?", Anne-Marie Makin and Chris Winder argue that the OHS management needed to implement contemporary OHS legislation could be usefully underpinned by a self-assessment tool to focus organisational attention on "the real issue", identifying and effectively addressing all of the significant hazards arising from the organisation's activities.