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Workplace Arrangements for OHS in the 21st Century

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Professor David Walters

TUC Professor of Work Environment, School of Social Sciences, Cardiff University,
United Kingdom

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Abstract

The international influence of the Robens Report on occupational health and safety management (OHSM) is widely recognised. Its approach to self-regulation and advocacy of greater consultation between workers and employers, helped formulate regulatory strategies for health and safety at work that have been extensively adopted internationally in modern OHS legislation and encouraged by national regulatory agencies.

In this paper an attempt is made to describe what this means in terms of structures, processes and orientations of joint arrangements for OHSM in workplaces and to analyse strengths and weaknesses in their application. In Australia various approaches to reforming workplace arrangements have been informed by ideas derived at least in part from Robens. My intention is not to provide a detailed critique of Australian practice but to locate it within wider international experience in order to better understand the nature of participatory OHSM, the role of 'self-regulation' its links to OHS outcomes and the various supports and constraints underpinning its success or failure. Systematic approaches to participative workplace arrangements for OHS in Australia are therefore contextualised by comparison with those in other countries and especially with EU member states where revisions have emphasised the regulation of participative OHSM, following the impact of the EU Framework Directive 89/391.

At the core of the paper is the question of the continued relevance of these approaches in a world of work that is fundamentally changed since they were originally formulated several decades ago. It looks at ways in which regulatory bodies, employers, trade unions and OHS practitioners have addressed the challenges to OHSM posed by changes in the structure and organisation of work and the labour market and it seeks to understand what it is about participatory strategies for OHSM that make them useful in the present regulatory and economic environment.

Introduction

This paper offers a reflective and speculative commentary on the representation of workers' interests in the development of approaches to regulating health and safety at work. It aims to stimulate a discussion of key issues at both policy and practical levels that underpin the kind of workplace arrangements for health and safety required by regulation in both Australia and EU member states. It is concerned with future policy development and more importantly, its effective application at the level of work and the work environment. Its central focus is on the notion of self-regulation and its implied involvement of workers and their organisations in OHSM and what it is about such arrangements that make them useful and relevant at the present time. It acknowledges the existence of a changing constellation of macro-level influences on such participative

arrangements. Of special concern therefore, is the understanding what are the supports and constraints for the continuation and development of these arrangements.

The paper begins with a generalised description of the characteristics of ‘post Robens’ regulatory approaches to workplace arrangements for health and safety. It draws attention to features of these approaches that socio-legal discourse has termed ‘reflexive regulation’ and outlines regulatory approaches to workplace arrangements in Australia and the EU that are intended to achieve the representation of workers’ interests on the work environment. The evidence for the effectiveness of participatory arrangements is reviewed and a commentary on what makes them effective is offered. Such effectiveness in the changed world of work in which arrangements for participation operate continues to be a matter of debate. Some key issues confronting the continued relevance of the participatory elements of the ‘post Robens’ approach are identified. Particular challenges include especially, structural changes in work and labour market and the decline of trade union density and influence. Finally, a tentative discussion of some current and future responses from state and stakeholder interests to such challenges is presented .

The elements of self-regulation

In the shift from prescriptive to process regulation in occupational health and safety from the 1970s onwards, we see the widespread introduction of new sets of regulatory provisions into the regulatory mix already evident in advanced industrial societies. In these, employers are required to institute structures and procedures to *manage* the risks to the occupational health and safety of their workers. Such provisions have a constitutive and structuring function for employers and they require them to focus on the organisational means with which they are equipped to assess and manage risks.

Moves in this direction were stimulated by the recommendations of the Robens Report, subsequently enacted in the UK in the Health and Safety at Work Act 1974. They could also be found in the separate development of Nordic provisions in the same period.¹ Emphasis in all these regulatory developments had moved gradually towards achieving self-reliance, self-regulation and increased responsibility on the part of the employer and worker (Aalders and Wilthagen, 1997, Hutter 2001). Thus, it is representative of an important paradigm shift in regulatory strategies, in which a primary objective has become the means of influencing employer/management will and capacity to operationalise OHSM in order to manage risk and lead to improved OHS performance.

The measures that implement these post-Robens approaches in the growing number of countries in which they have been adopted, as well as being constitutive and process orientated, also have several characteristic features in common. They tend to specify the *general duties* of employers to provide a safe and healthy working environment. There is considerable variation in the extent to which the employer is required to take a holistic

¹ It is in fact debatable how much credit can actually be attributed to the Committee of Inquiry on Safety and Health at Work for the originality of much the ideas and recommendations contained in its report and arguably these Nordic approaches both predated and were more advanced in many respects than the Robens recommendations.

view of the relationship between work and health and to adapt work to workers (rather than *vice-versa*), but there is a general trend in this direction. The measures have increasingly demanded that the employer delivers the appropriate level of risk management. This may be required through evidence of safety policies, risk assessments, safety plans and auditing. It is further evident in measures requiring employers to use competent persons or services to deliver these things. Importantly, none of this is to be undertaken unilaterally by the employer (although it is the employer's responsibility). In addition, arrangements are demanded that will allow the participation of workers and their representatives in the constitutive processes that make up the approach to health and safety management that is required of the employer. There are variations in the type and extent of detail of such arrangements and the level of provision that employers are expected to make. However, at very least, they provide workers and their representatives with information and consultation rights on matters relating to the management of their health and safety at work.

In the EU these measures are now codified in the EU Framework Directive 89/391 and in many other EU directives that deal with more specific aspects of the work environment. In Australia such mandatory approaches to OHSM have been under discussion but most state jurisdictions advocate a general systems approach derived from the Robens principles supplemented with guidance on how to implement its detail. Employers are also warned that they are more likely to be inspected in the absence of the demonstrable application of OHSM and indeed prosecuted following accidents. Thus, while the details of systematic OHSM are not mandatory in Australia — as they are in the EU — governmental sponsorship of its principles is evident.

Australian and European Union models of workplace arrangements for health and safety

In Australia different states have adopted somewhat different detailed approaches to the workplace arrangements required for health and safety. They all however subscribe to a similar broad pattern. As Johnstone (1999) has written:

'A major development in OHS regulation in Australia since the 1970s has been the move away from detailed, technical specification or prescriptive standards, to a combination of general duties, supplemented by performance standards, process-based standards and documentation requirements in regulations and codes of practice made under the OHS statutes. The general duty provisions have all been introduced to ensure that the principal parties involved in all work processes are subjected to a range of interlocking and overlapping duties requiring them to do all that is reasonably practicable to ensure that work is carried out in a way that is safe and without risks to health.'

Thus, Australian approaches have focussed more on auditing the application of the requirements of health and safety management systems developed from non-regulatory sources. Gallagher *et al* (2003) state:

'Leading these developments are auditing systems promoted by the health and safety authorities of Australia's state and federal governments that incorporate the

essential elements of an OHSMS in their audit criteria. These government audit systems include SafetyMAP (Victoria), TriSafe Management Systems Audit (Queensland), Safety Achiever Business System (South Australia), WorkSafe Plan (Western Australia), CPSC Guidelines (New South Wales), and ComCare SRC Risk Management Model (Commonwealth). In addition private proprietary OHSMS are marketed including the Du Pont and NSCA Five Star systems and a number of industry specific systems developed for construction, mining, health care, and meat processing. Lastly, in 1997 Standards Australia produced a guidance document for OHSMS (AS/NZS 4804) followed by a specification standard in 2000 (AS/NZS 4801). These standards are based upon similar quality standards and prescribe a continuous improvement cycle of planning, implementing, measuring, reviewing and improving the OHSMS. The general objectives of AS/NZS 4801 are for compliant organisations to integrate OHSMS with other systems, to improve their OHS performance, and to meet legal responsibilities.'

One means of addressing these demands is through the adoption of occupational health and safety management systems (OHSMS) and this has been an increasing trend among (mainly) large organisations internationally during the last two decades. The attractiveness of such systems to employers and their link to developments in thinking around quality management systems is well known. However, while there are some indications that they result in improved performance, there are many examples in which the measurement of such improvement has been shown to be spurious or a misleading artefact of the system rather than a measurement of reality. Overall the effectiveness of such systems remains debatable. One important weakness that is especially relevant is their ambivalence over representative worker participation. Despite the theoretical notion that effective employee consultation should support OHSMS and the empirical evidence suggesting that OHS performance is improved when joint arrangements are in place (see later), it is widely held that OHSMS generally are managerialist and not participative. According to Frick et al (2000):

"... most voluntary OHSM systems define top-management as the (one and only) actor. Such systems instruct management on how to control the OHS issues of their firm. The instructions may include recommendations to consult with the workers, but typically the consultation process does not entail any sharing of decision-making power."

Clearly, if this is so, OHSMS are not delivering the arrangements for 'self-regulation' intended by the post-Robens regulatory strategies previously outlined. There are signs however, that the preoccupation with adopting such systems may be changing. Recent commentators detect a shift in public policy towards simpler and more direct methods of control (Gallagher *et al*, 2003). Moreover, there have been incidents² in which it has been argued that the use (misuse) of OHSMS have contributed to serious accidents, adding further to disenchantment with their use.

² For example, the Royal Commission investigating the Longford explosion stated of the Occupational Integrity Management System used by Esso at the time of the disaster: '*In some respects concentration upon the development and maintenance of the system diverted attention from what was actually happening in the plant*' (cited in Hopkins 2000:84)

In parallel with this focus on OHSMS in Australia, at state level, there are broadly comparable provisions for arrangements to ensure representation of workers interests in health and safety, with a number interesting differences in detail. Thus all jurisdictions allow for the setting up of joint health and safety committees at workplace level (although in some cases smaller workplaces may be excluded). The functions of such committees usually include collaboration with management in maintaining a safe system of work. Detailed activities of JHSC are usually not mandated but the general idea is that the committee should have a broader strategic function with participation in more detailed activities monitoring the work environment being undertaken by worker health and safety representatives.³ Detailed functions of worker health and safety representatives vary between states, Bohle and Quinlan (2000) note for example that:

'The South Australian, Western Australian and Victorian Acts all give HRSs wide-ranging powers including the right to information about workplace changes that may affect OHS as well as rights to make inspections, investigate complaints, make representations to the employer, hold discussions with employees and draw on outside assistance. In other jurisdictions, such as in Queensland, HSRs enjoy a more circumscribed set of powers.'

Controversial rights exist in some states enabling HSRs to issue provisional improvement notices or order a cessation of work in circumstances of imminent risk.

In Europe, in contrast, the means of risk management have become incorporated into legislative measures. Policy on inspection and control has also changed focus from inspecting compliance with prescriptive standards to the inspection of the evidence of systematic management of the work environment.⁴ It is likely that the basis for such inspection will be similar to Australian practice in some cases, such as where formalised OHSMS systems are in use, but in other cases it may be that the presence of requirements on more systematic and participative health and safety management in the regulatory measures themselves, lead to differences in the approaches to inspecting the evidence of their use.

Pre-1990s European OHS regulation was extremely diverse and the result of many influences.⁵ This diversity has to some extent been addressed by the adoption and implementation of the Framework Directive 89/391 in which the Robens approach to the

³ Historically NSW was an exception to this rule in as much as its legislation did not make provision for separate worker safety representatives and therefore some of the functions associated with them were ascribed to the joint health and safety committee

⁴ Although the extent of the impact of this is fairly widespread in terms of *inspection policy*, impact on *inspection practice* is not clear.

⁵ Countries of southern Europe such as Spain and Italy for example had very different regulatory systems for health and safety that had different origins and were subject to different influences than those of the northern European examples above. Other southern European countries such as Greece and Portugal lacked meaningful regulation largely because of the absence of an infrastructure to make one viable. While countries such as Germany had a highly developed system but one that had fundamental differences in both structure and orientation to those in other EU countries. Such differences were still largely in place well into the 1990s (Walters (ed.) (2002))

self-regulation of processes to achieve desired health and safety goals is developed with additional requirements that mandate management arrangements for employers to evaluate and control risks in a competent and participative way according to a set of 'preventive principles' which effectively define good practice. Under the Directive they are required to:

- ensure the safety and health of workers in every aspect of their work, a principle of responsibility that is not affected by the workers' own obligations in the field of safety and health
- have a programme of prevention (the preventive principles) which links general obligations to ensure safety with implementing an effective means of its achievement (Article 6)
- evaluate the risks of the workplace, usually through the adoption of a written risk assessment (Article 6)
- establish preventive services or use external ones (Article 7)
- *allow the participation of workers and their representatives, including rights to consultation, information and balanced participation in making arrangements for health and safety, the right to withdraw in the event of danger and protection from victimisation for taking such action.*

The detailed interrelationship of these requirements make it clear that an integrated and participative approach to preventive health and safety is envisaged in the Directive. According to Article 2 it applies to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, leisure, etc.) Each member states has implemented the Directive in its national legislation. There are variations in the ways in which this has been done as there were in the pre-existing national provisions. This means that there is not complete convergence, but nevertheless, there is a fair degree of conformity as far as participative arrangements are concerned.

There are differences of detail in the provisions of different EU member states dealing with workplace arrangements for the representation of workers' interests in health and safety, as there were between different states in Australia. However, while there are clearly differences both within and between the European and Australian models, their similarities are greater. For example, both Australian and European workplaces have arrangements in which worker representatives exercise a similar range of rights and functions based around receiving and using information on health and safety to make representations on behalf of workers as well as to engage with management in undertaking processes such as hazard and accident investigation, risk assessment, inspecting documentation and workplace inspections. They may be involved in planning prevention strategies, selecting prevention specialists and in relations with regulatory agency inspectors. They are provided by their employer with paid release from their normal work to undertake such activities and also receive training to enable them to do so. There are of course some significant differences — such as the right to 'stop the job' possessed by safety delegates in Sweden and the health and safety representatives' right to issue provisional improvement notices in some Australian states, that are not matched in other countries. There are further differences in explicit rights to time of for training (and the nature of such training), undertaking representative functions, and on relations

with OHS inspectors and practitioners. Moreover, there are differences in the extent to which there is a requirement to involve representatives in planning and auditing of OHS arrangements. The architects of the Framework Directive in the EU, generally eschewed the opportunity to harmonise national provisions upwards in terms of specific requirements on worker representation⁶. However, in some countries, where works councils dominate the representative structures for health and safety, the Directive may have had such an effect indirectly. For example, in both Germany and the Netherlands, existing co-determination rights meant that the scope for the role of works councils in representation on health and safety was broadened considerably as a consequence of the transposition of the Directive. Thus in Germany, since employers' responsibilities were extended to 'the adaptation of labour to the individual' so was the works council's rights to co-decision on this issue. Similarly in the Netherlands, legislation on the rights of works councils has enhanced their legal position on prior consultation on risk assessment and their rights of approval over the choice of OHS services under the Work Environment Act.

In countries such as France, and until recently in New South Wales, the main structure of representative participation is a joint health and safety committee. More commonly, however, joint health and safety committees exist alongside other arrangements for worker representation and, as in the UK, are intended to undertake a more strategic role in keeping health and safety arrangements/performance under review — although the extent to which they do so, or are more commonly involved in more everyday issues is not entirely clear. An interesting variation is the safety organisation approach found in Denmark in which joint structures made up of worker safety representatives and supervisors function at the level of the work unit, feeding into safety committees at more aggregate levels within the organisation. In some countries there are workers' health and safety committees in their own right, operating as sub-committees of works councils. In some cases, worker organisations mandate health and safety representatives with a similar representational authority to that of other workplace representatives, whereas in other situations (such as in Italy for example) a distinction is made the negotiating function of general workplace representatives and the consultative functions of safety representatives. Clearly, many of these variations reflect differences in national industrial relations cultures and practices. Different degrees of emphasis on for example, the role of joint committees, relations with works councils, relations between worker health and safety representatives and other worker representatives and between them and management can be largely explained by such differences.

A further element in representational participation that is clearly also relevant are the arrangements made outside of the workplace, at sector and or national levels (and, increasingly in some countries, regional levels also). The Robens approach advocated the establishment of industry level consultation. In the UK this resulted in a substantial number of tripartite committees that were either subject or industry specific, all under the aegis of the tripartite Health and Safety Commission. Similar arrangements are found in

⁶ They could, for example, have borrowed from Swedish provisions rights for safety delegates to stop dangerous work, or rights for trade unions to appoint regional representatives to cover workers in small enterprises.

other EU countries where corporatist traditions of peak employer and worker organisations' involvement in regulatory institutions are much stronger than in the UK, and they also exist in Australia and state and federal levels. They are usually regarded part of the spectrum of participative arrangements spanning workplace to national level that play a positive role in promoting and sustaining workplace arrangements for participative health and safety management. However, there is actually little tangible evidence of this, as in most countries the relationship has not been studied extensively (James and Walters 1999). Furthermore, some critics have argued forcefully that such arrangements act to undermine workers' interests especially in times when the wider political environment favours those of their employers. A related issue is the extent to which the joint structures of social insurance set up outside of the workplace to provide compensation for the effects of work-related injuries, ill-health and fatalities also have a preventive remit and are influential in determining prevention arrangements within workplaces. For example, in a number of EU countries prevention services are provided by or through mutual insurance agencies. In countries that follow the German model, sector based insurance associations may also have a regulatory inspection and control function. In addition such organisations often also provide a significant source of research expertise and information on the work environment.

What works in workplace arrangements for health and safety?

Evidence of effectiveness of arrangements for representative worker participation is available at essentially two levels. A number of studies suggest that indicators of objective health and safety performance, such as injury rates, are better in situations in which joint arrangements are in place and/or when trade unions are engaged in worker representation in workplaces. Other studies point to associations between the presence of representative structures and indicators of a more systematic approach to OHS management.

In the first category we find for example, analysis of the British Workplace Industrial Relations Survey 1990 in which Reilly et al (1995) demonstrated that in workplaces, in which joint arrangements were in place and especially where trade unions were involved, injury rates were considerably improved. Analyses of the more recent WERS 1998 in the same vein, have produced some comparable findings – although less clear cut than those of Reilly⁷. In Canada, Lewchuck et al (1996) found that the presence of joint health and safety committees was associated with reduced lost-time injuries. Havlovic and

⁷ See for example Litwin (2000), and Robinson and Smallman (2000). However, it is important to note that not all these further studies have produced such convincing findings. A study (Hillage et al 2000) conducted on behalf of the HSE was unable to replicate Reilly's findings and a further study (Fenn and Ashby 2001) produced a conflicting set of conclusions. Similarly, in other countries studies of joint arrangements are not entirely in agreement concerning the beneficial effects of joint arrangements. In the US for example there have been a range of studies on the role of joint health and safety committees in which no association between the mere presence of committees and improved health and safety, performance is found, but where improvements are associated with particular facets of their operation such as the presence of trade unions, and trained participants for example (Boden et al 1984, Cooke and Gauthi (1980) and Kochan et al 1977). Similar associations were reported in early British studies (for example, Beaumont et al 1982)

McShane (1997) also concluded that ‘there was some support for the idea that structured joint health and safety committees activities help to reduce accident rates’. Although, in an earlier comparative study on the North American study logging industry, Havlovic found that while joint safety committees were associated with improved fatality rates they were one of a number of factors associated with such improvements. Others included training, enforcement and changes in managerial practices. Shannon et al 1996 found that ‘participation of the workforce in health and safety decisions’ was one of several factors related to lower claims rates. In an overview of Canadian work on this subject Shannon et al 1997 suggested that ‘empowerment of the workforce’ was one of a number of organisational factors consistently related to lower injury rates. In an earlier study Shannon indicated that such ‘empowerment’ included the presence of unions and shop stewards, union support for worker members of joint health and safety committees and general worker participation in decision-making (Shannon 1992). Conversely, objective measurement of health and safety outcomes possibly suggest links between rising levels of accidents and the declining influence of trade unions (Tombs 1990).⁸

In the second category there a number of studies that suggest that participatory workplace arrangements lead to OHSM practices that in turn could be expected to be associated with improved OHS performance outcomes (a range of early British studies are reviewed in Walters 1996). They demonstrate the effectiveness of active and organised workers’ representation in ameliorating workplace hazards (see for example Dedobbeleer et al 1990). They show that better standards are achieved in unionised workplaces than in non-unionised ones (Grunberg 1983). They indicate that (trained) representatives stimulate and participate in workplace OHSM structures and procedures, tackle new OHS issues and ‘get things done’ (Walters et al 2000). Even in small workplaces, regional representatives stimulate ‘activation’ of health and safety as well as engaging with employers and workers in more prescriptive aspects of their tasks such as inspecting workplaces (Frick and Walters 1998, Walters 2002).⁹ Australian studies further conclude that the introduction of representative arrangements led to major changes in attitudes as well as practices (Biggins et al 1991, Biggins and Phillips 1991a,b Gaines and Biggins 1992 and Biggins and Holland 1995 Warren-Langford et al 1993).

Why does it work?

If health and safety representatives and joint arrangements for health and safety are effective in improving health and safety performance, and, as we have seen there is quite strong evidence that they are, then it is important to know what makes them effective.

Walters and Frick (2000) in their extensive review of such evidence note that features promoting effectiveness include:

- adequate training and information
- opportunities to investigate and communicate with other workers
- channels for dialogue with management on existing problems and planned changes

⁸ However, see Nichols (1997) for a more comprehensive explanation of such trends in which the fortunes of trade unions are not the most significant feature.

⁹ See also Lamm and Walters in this conference

They argue that the more such criteria are met, the more worker participation is a major influence to detect and abate work hazards. While such conditions might in theory exist in non-unionised forms of participation, the reality of the situation is that participation is unlikely to occur in an effective or sustainable way without support¹⁰. British research reviewed in Walters (1996) indicated that the effectiveness of joint arrangements in improving OHS is supported by:

- legislative provisions for worker representation actively supported by regulatory inspectorates
- management commitment both to better health and safety performance and participative arrangements coupled with the centrality of the provision for preventive OHS in strategies for ensuring the quality and efficiency of production
- worker organisation at the workplace that prioritises OHS and integrates it in other aspects of representation on industrial relations
- Support for workers' representation from trade unions outside workplaces, especially in the provision of information and training
- consultation between worker health and safety representatives and the constituencies they represent
- well-trained and informed representatives

Thus, autonomous representative participation is normally dependent on trade union support both from within and from outside workplaces. In addition there is evidence that suggests that local union presence can enhance the activities of other players in the organisation of preventive health and safety such as the regulatory authorities (Weil 1991) and the preventive services (Frick 1994). There is also evidence that where representatives have been given significant powers as the result of legislative arrangements (or those derived from collective agreements), such as the right to stop dangerous work (as in Sweden) or issue provisional improvement notices as in some Australian states, such powers are used effectively and responsibly and that they are not abused (Bohle and Quinlan 2000: 304-305). Therefore, in many of the areas in which legislation in some countries is relatively weak, there is sufficient evidence to infer that its strengthening would aid the improvement of the work environment. For example, there is a good case for providing worker representatives with greater powers — such as the aforementioned rights to intervene in situations of serious and imminent danger — to take action in disputed situations or in the face of uncooperative employers. There are also good grounds for improvements to explicit rights to time off for training (and the nature of such training), access to workplaces, and on relations with OHS inspectors and practitioners in some countries.

In the case of training for example, many studies have established that there is a perception that is shared by managers, worker representatives and regulatory inspectors

¹⁰ There is little information available on the experiences of health and safety representatives that operate without trade union support, but such as there is indicates that the same kind of determinants of effectiveness would apply (Spaven and Wright, 1993; Hillage et al 2000). However, in most such situations sustaining support in the absence of trade unions is problematic (James and Walters 1997)

alike that trained health and safety representatives make for better participative practices. However, there is a huge range of provision covered by the term 'training', so it is quite useful to know a little more about the link between it and the activities undertaken as its result. Under UK legislation and codes of practice, trade union health and safety representatives benefit from relatively well developed rights to time off for training which should be provided or approved by trade unions or the TUC. Walters *et al* (2001) in their study of the impact of TUC education and training, concluded that their findings provided powerful evidence that trade union training both supported the workplace activity of health and safety representatives and acted as a stimulus for its initiation and development. Moreover, they argued that the content, context and means of delivery of trade union education specifically, were the keys to understanding the high value placed upon it by recipients. They indicate that there is no form of training for worker representatives other than that provided through labour education in which such fundamentally worker centred normative arguments on health and safety are so comprehensively adopted and they maintain that such approaches are basic to the character, quality and success of this form of training as well as a crucial reason why it is so highly valued by its recipients.

What all this evidence suggests is that where worker representatives are supported by trade unions directly or indirectly, they are more likely to be able to engage meaningfully and autonomously in the dialogue with employers that is essential to self-regulation. In many countries however, legislative requirements refer to information and consultation that apply to '*workers and/or their representatives*', implying that the direct participation of workers in health and safety arrangements is also sought. While in keeping with the emphasis of modern approaches to HRM, evidence for the effectiveness of such direct participation is difficult to both gather and assess. Walters and Frick (2000), based on a review of available international documentation of experience of direct participation suggest that this form of participation is probably best described as part of the same consensus/conflict continuum along which workers and worker representatives balance their actions. As Walters and Frick explain, the position occupied along this continuum is likely to be very much determined by employment relations factors such as management attitudes and supports towards participation, since the role of external regulation, inspection and control is relatively weak. Moreover, they further observe that different forms of participation may affect each other. Direct participation, for example, might help to instigate representative union-based participation, while representative participation could influence the development of high involvement direct-participation. There is relatively little research on these issues. However, quite a good illustration of this effect is provided by an early Norwegian study undertaken by Karlsen *et al* in 1975 (as described by Gustavsen and Hunnius, 1981). Here it was found that the operation of direct forms of involvement in health and safety was strongly influenced by the broader patterns of employer-worker relations within which they take place. For example, their findings revealed that skilled workers were better able than unskilled ones to persuade management to invest in health and safety improvements because of their centrality to the production process and their experience in recognising and resolving problems. They further found that the workplace trade unions played a crucial role in mobilising these sources of worker influence into a 'joint action-voice'. Therefore, while, evidence for the

effectiveness of direct worker participation in respect of health and safety, is limited and its generalisability is far from clear¹¹, theoretical considerations as well as general survey evidence would lead to the expectation that it would work most effectively when used in conjunction with collective forms of representation (Walters and Frick 2000; 54-57).

It is fairly evident that the measures to provide workers with representation on health and safety have also had a substantial influence on workplace industrial relations structures. In the UK for example it is estimated that there are some 200,000 trade union health and safety representatives. In Australia in the mid 1990s there were more than 30,000 employee health and safety representatives (Bohle and Quinlan 2000: 430). In other countries in the EU a similar impact has been noted (Walters Dalton and Gee 1993). There are also substantial numbers of joint health and safety committees, with the majority of large organisations now claiming that they have such committees – even in non-union organisations. If the bipartite and tripartite structures that exist at sector, region and national level are added to these as well the staff employed by peak employer and worker organisations to service all of them, the scale of the institutional structures for participative organising of the work environment becomes apparent. While some of this was in place in the pre-Robens era, it is mostly a consequence of Robens style reforms. Its impact should be discernable in qualitative as well as quantitative terms since the large numbers of health and safety representatives and the joint arrangements in place both inside and outside workplaces are likely to at very least made a contribution to change in the ways in which work environment issues are perceived, and articulated in relations between capital and labour and contributed to a more prominent role for the work environment in the labour relations agenda. Whether, or to what extent this is the case is difficult to determine, and has not really been the subject of direct study. However, indirect evidence derived from, for example, the extent of coverage of OHS in labour relations, agreements, structures and procedures at enterprise level, as well as from surveys of worker attitudes and priorities is strongly suggestive that these measures are among the factors that have had a major impact on attitudes and practices in relation to the work environment in advanced market economies.

Some wider regulatory contexts for worker participation in systematic occupational health and safety management

As previously outlined, the other elements of mandatory health and safety management that are found in the EU requirements, especially employers' duties to evaluate and control risks with the support of competent prevention services, are part of a combination of measures which along with those on worker representation and participation, are intended to contributing collectively and inter-relatedly to effective OHS arrangements. All these elements help ensure that employers are motivated and supported to do the 'right things right' and that there are sufficient independent checks and balances necessary to underpin such a requirement. Participative arrangements therefore cannot be properly understood in practice without some reference to their inter-relationship with

¹¹ Most studies on direct participation in OHS do not incorporate any explanatory frameworks within which their findings can be located with the result that the meaning and general applicability of them is far from clear (See Walters and Frick (2000:49)

these other provisions. Indeed, it may well be that some of the efforts to isolate and measure the effect of joint arrangements or trade unions on health and safety organisation and performance discussed previously are to some extent missing the point. While it seems beyond dispute that if certain supports are in place, such factors do have an effect on OHSM and its OHS outcomes, they are also clearly part of a constellation of influences that operate together.

It is important to understand the significance of these relationships if the barriers and constraints to positive actions on the working environment that are posed by current forms of work are to be properly appreciated and overcome. Risk assessment in the EU, for example, implies something different to previous health and safety strategies. With its emphasis on active approaches to managing risk by participants (as opposed to passive approaches to compliance with externally administered regulation), it became useful short-hand for *instrumentalising* much of what was intended in the overall conceptualisation of mandatory OHSM represented in the EU Framework Directive. Yet surveys of implementation of these measures on OHSM indicate relative weaknesses in operational effects. This is especially so in the atypical work situations, contracting and small enterprises, which are increasingly characteristic of the current structure and organisation of work in the EU and widely reported in European countries¹². Moreover explicit extension of provisions for consultation on risk assessment do not appear to have resulted in a significant changes of practice. Indeed, surveys from several countries report worker representatives' frustration with lack of consultation on this issue¹³. While there are some important national differences (for example, operation seems to be more evident in Scandinavian countries) generally, it is only in large enterprises with well-established systems and procedures for managing health and safety that the practice of risk assessment appears to be highly developed (even here the degree of active participation of workers and their representatives is limited).

Another of the Framework Directive's elements, the fundamental responsibilities of employers, their link to a more holistic conceptualisation of work and health and the consequent need for employers to adopt a set of best practice 'preventive principles' — are especially significant for participatory practices. The influence of the Scandinavian approach (which was also widely upheld in professional health and safety circles) was being felt in EU law-making prior to the Framework Directive. It resulted for example, in the use of the term 'working environment', alongside health and safety in the Single European Act 1986. However, its impact on the wording of the Directive itself was particularly pronounced.

¹² For example, a survey of the operation of risk assessment in small enterprises in all EU countries is reported by the European Observatory for Small and Medium Sized Enterprises (ENSR 1999). Walters (2001) discusses the situation in small enterprises and atypical work in some depth in a study of health and safety management in small enterprises in seven EU countries. Karageorgiou *et al* (2000) present a detailed analysis of operation in four EU countries while, more generally, Quinlan and Mayhew (2000) outline the effects on health and safety organisation (including risk assessment) of precarious employment and work re-organisation internationally, showing that limited application of such approaches is widespread.

¹³ See for example, Walters 2002, especially surveys reported in Chapter 6 on Italy and Chapter 9 on the UK.

For example, its ‘principles of prevention’ under Article 6. 2 make clear that a holistic view of the working environment is intended and aimed at:

‘adapting the work to the individual, especially as regards the design of workplaces, the choice of work equipment, and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate, thus reducing the effects on health’ (Art 6. 2. (d))

and:

‘developing a coherent prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the work environment’ (Art 6. 2. (g))

This presupposes a way of thinking about the work environment not always implicit in voluntary OHSMS. Indeed, the way in which many OHSMS models are implemented (with for example, limited worker representation and a managerialist approach to ‘employee consultation’) and the nature of the auditing techniques used in their operation, tend to promote ‘safe person’ strategies of OHSM over more participative ones that are predicated on a wider conceptualisation of the relationship between work and health.

These developments of the regulatory definition of ‘health and safety’ are therefore potentially important influences on arrangements made for self-regulation in the changing organisational contexts in which they need to be operationalised at workplace level. Their more holistic focus combined with preventive principles that are also organisational and situational in orientation should give employers a clear steer away from the ‘safe person strategies’ that have never been especially helpful in improving the work environment and which are particularly inappropriate in changing work contexts in which the way that work is organised and managed has a major impact on workers’ health and well-being. They are particularly important in defining the agenda of issues on which workers’ representatives engage with management. While work organisation, working time, work intensity and work-life balance are arguably outside a technical interpretation of ‘health and safety’, they are clearly part of the holistic definition of work environment. It is also clear that these more widely defined work environment issues fall within the broader experience and competence of many workers’ representatives and their organisations. It follows that these requirements cannot be isolated from the others dealing with risk assessment, competent advice and worker participation. Nor can they be isolated from inspection and control and the threat of penalties. However, it also follows that there are many work situations in which it is less likely that such supports and controls will be found and where there are major issues concerning capacity of employers to be aware of the meaning of such responsibilities and make effective arrangements for their operation.

The third element of Framework Directive’s continental European bias is apparent from the significant role it gives to prevention services. Whether internal or external, in all cases such services must be sufficient and competent to deal with the organisation of protective and preventive measures having regard to the size of the enterprise, the nature of its risks and their distribution. This reflects the emergence of a conceptualisation in

European debates in which an integrated system of prevention at the workplace was postulated as a corollary of the inclusion of principles of prevention in the design of articles and substances for use at work (Vogel 1993). There was considerable divergence in the legislative requirements on preventive services in place in different countries before the transposition of the Framework Directive, as well as a considerable range in the models operating in practice. Integration was the exception rather than the rule in most countries (Walters 1997). Two main themes emerged in the national debates surrounding transposition. In one, the introduction or extension of integrated occupational health service provision was the main focus while in the other attention was directed more to competence of the support for employers' OHSM and provision of OHS services is a somewhat secondary issue. In most EU countries it was the former debate that predominated while in the UK, where there was no tradition of legislative measures requiring employers to either provide or use occupational medical or occupational safety services (except in very special and specific circumstances) it was the latter theme that dominated.

In most of Europe, legislative provisions following the Directive have therefore moved towards integration and certification of prevention services and increasing their coverage. Implications for the role of participative arrangements emerge from this. It is normal in many countries for example for representatives of workers to be involved in the choice of such services and consulted by them in their activities in relation to the enterprise. In the UK, the debate on support for prevention has taken a very different perspective coloured in part by the almost complete absence of legislative requirements on professional support for OHS before the Directive and influenced by the wider tradition of voluntarism in British approaches to health and safety organisation. Until now, the only aspect of the UK approach that the Directive's provisions have influenced is that relating to the question of the *competence* the employer (or by extension, his advisers). Even here, the approach is limited and employers in the UK still have by far the greatest discretion in the EU concerning their use of OHS services and practitioners. A consequence of the UK approach is a much lower expectation of workers' consultation on appointment and use of preventive services. Australia seems to have an approach largely similar to that of the UK. What all this means for practice difficult to say. The UK is clearly out of step with the rest of the EU on legislative provisions for prevention services and its workers are probably poorly served by such services in comparison with other northern European countries in which such services are required by law. It is also the case that in the UK, in contrast with countries such as Denmark, Sweden, Italy, Germany and France, organised workers have little voice in employers' decisions over the appointment and use of health and safety specialists and consultants, whether in the form of integrated prevention services or otherwise. Nor in the UK, is there any tradition of economic independence of such specialists from employers, as there was in a number of EU countries where legislative measures helped to establish their role.¹⁴ However, how significant any these

¹⁴ Removal of state subsidies and greater emphasis on the commercial viability of preventive services has helped undermine such economic independence in some EU countries. While this has led to some protest, it is not clear whether or how it has altered the role of prevention services or improved their efficiency in such situations. Again, further research is needed to examine this important issue.

features are in terms of the influence on the effectiveness of participative approaches to arrangements for health and safety has not been properly evaluated.

Some problems for participative arrangements on the work environment

In the foregoing sections I have tried to provide a general outline of regulatory context of participatory arrangements for safer and healthier work environments stemming from the notions conventionally attributed to the Report of the Inquiry into Safety and Health at Work chaired by Lord Robens published in the UK in 1972 (Robens 1972)¹⁵. Largely in keeping with the main thrust of socio-legal literature on this subject over the past few decades I have argued that such measures — which are now quite ubiquitous in advanced market economies like those of Australia and the European Union — are used to focus the attention of duty holders and regulators, as well as that of representatives of workers, on the process of managing the work environment. This is done to achieve the means of improving and maintaining improved health and safety performance. I have pointed to some of the general features of the arrangements at the workplace level and beyond it that have resulted (largely) from these regulatory requirements and some of their principal variations.

Some of these measures seem to have led to OHS arrangements being set up at workplaces more successfully than others. It is evident from the results of a substantial number of studies undertaken over the last twenty years that there are a set of circumstances in which self-regulation can be reasonably successful and can lead to the establishment of participative OHS arrangements within enterprises. They include, for example, situations in which there is :

- A strong legislative steer
- Demonstrable senior management commitment to both OHS and a participative approach
- Sufficient management capacity to adopt and support participative OHS management approaches
- Effective autonomous worker representation and external trade union support
- Competent hazard/risk evaluation and control
- Sufficient integration of OHSM into the wider management of the organisation
- Effective external inspection and control

In terms of the participative arrangements in particular, while research shows that joint arrangements result in better OHS outcomes, it also indicates a number of

¹⁵ Without wishing to extend or complicate this discussion, it should also be pointed out that while the stimulus for the subsequent development of self-regulation in international regulatory strategies is correctly attributed to the recommendations of the Robens Committee, the issue of worker representation on health and safety has a far more complex historical development and was not a subject upon which the thinking of the Robens Committee was particularly advanced. The Committee in fact limited their recommendations on the subject to a ‘statutory duty on employers to consult’ and expressly avoided making specific recommendations on worker safety representatives. Indeed the subsequent legislative development of these measures in the UK had far more to do with the trade union campaign for them (which predated Robens by ten years) than with the recommendations of the Committee of Inquiry.

preconditions/supports that are necessary for this to occur. This is especially so with regard to representational rights, worker organisation inside and outside workplaces, information, training, and support of workplace constituencies. Moreover, arrangements for self-regulation and their supports are aspects of a multi-factorial integrated approach to OHSM, the core elements of which function supportively in relation to one another and cannot be separated.

It is equally evident is that there are circumstances in which some or all of these elements are not likely to be present and therefore in which self-regulation is unlikely to be successful without considerable additional push-pull factors to make it so. The now well documented changes in the structure and organisation of work and labour markets that have taken place over the same period that post-Robens style regulatory arrangements for health and safety at work have been introduced are obviously important influences on the practicability of self-regulation. Outsourcing, franchising and downsizing by large firms has contributed to growing job insecurity, an expansion of temporary work, self-employment and growth in the number of small enterprises in many countries. Such practices have been driven by management strategies such as lean production, flexible work and engineered standards. The growing influence of neo-liberal policies in government has led to practices such as privatisation, corporatisation, market testing and competitive tendering, with these developments being experienced in both private and public sectors. The shape and impact of labour market shifts have also been influenced by changes introduced in the legal frameworks governing employment security, industrial relations and social welfare. Overall labour market fracturing has been characterised by significant alterations in employment location, status and practices including work organisation, work intensity and production processes. This has led to further increases in small enterprises, multi-employer worksites, outsourcing, subcontracting, temporary work and casualisation all of which have features (or the absence of features) that are likely to pose problems for self-regulation.

It is in these circumstances that managerial will and capacity necessary to support health and safety arrangements is likely to be least developed and most challenged. Nichol's 'structures of vulnerability' that he uses to explain the sociology of increased serious injury and fatalities rates in small enterprises can, by the same token, be extended to many of these related situations¹⁶.

In most of these situations too, worker representation is extremely limited and the role of trade unions either absent or greatly diminished. At the same time, some of the more promising attempts to redress the problem of achieving sustainable health and safety arrangements in small firms for example, have been through trade union representation of workers' interests from outside their workplace, through the use of regional/territorial health and safety representatives and the legislation/collective agreements that underpin their activities in some countries¹⁷. Relatedly, there are developments in some sectors such as construction in the UK, Ireland and Spain and electricity generation in France,

¹⁶ Nichols (1997)

¹⁷ These developments are discussed at some length in the paper by Lamm and Walters — Regulating occupational health and safety in small businesses: Some challenges and some ways forward

where multi-employer worksites and subcontracting are the norm, in which trade unions have managed to extend representation of workers' health and safety interests to those workers who are not employed by the same employer, or managed to establish basic forms of health and safety representation in contracting and sub-contracted workforces, usually by agreement with employers. Representation such as this, which takes place within supply chain networks, has some potential to use the economic dependencies within such networks to promote OHS issues.¹⁸ It also seems to have been picked up by main contractors in industries traditionally hostile to trade unions and used as a means enhancing the operation of measures to ensure they themselves discharge their duties in relation to sub-contractors. Thus for example the Major Contractors Group, which consists of most of the large building contractors in the UK, although its membership is made up of construction companies traditionally hostile to trade unions, has recently become a keen advocate of the appointment of full-time trade union health and safety convenors on large construction sites and supports their access to sub-contractor workers.

In analogous situations in relation to representation of workers on OHS in small enterprises, there is some evidence to suggest that legislative provisions that provide a framework within which such representation may be enacted are a support that help legitimise the role of representation and provide a basic floor of rights on which, trade unions especially, can build. Collective agreements offer a further dimension to securing co-operation from employers. In Italy for example, at sectoral and regional level they underpin substantial structural arrangements to secure representation of workers health and safety interests in small firms in such sectors as construction and handicrafts.

However, these examples remain exceptions to the more common pattern of the absence of representation that characterises such work situations.

Many of the structural and organisational difficulties facing the implementation of post-Robens style, self-regulatory OHSM, described previously, are also the obstacles to effective worker representation that challenge trade unions. These are challenges trade unions are attempting to address with their strategies for 'renewal'. What is interesting is the extent to which they appear to have taken cognisance of the overlap between these problems and those encountered in implementing the regulatory measures creating participative health and safety arrangements that they played a not insubstantial part in creating in most countries in the 1970s and 1980s. And, following from this — the degree to which health and safety features consequently in approaches to trade union renewal. Space does not permit extensive elaboration of this theme, however a few salient points are worth mentioning. Survey evidence suggests that health and safety — or more correctly — a holistic view of work organisation and environment, and the unhealthy and unsafe aspects that result from poor management are relatively high in most workers' perceptions of their working conditions. Generally, societal expectations that risks should be managed adequately by duty holders, coupled with widespread belief that they are not, are also characteristic of modern market economies. These issues are among those on which surveys indicate there is widespread support for the legitimacy of trade union

¹⁸ see Walters 2001: 375-377, for further elaboration of this point

representation of workers' interests. They are also the issues on which trade unions at national level most commonly contacted¹⁹.

In industrial relations scenarios in which representation has become increasingly constrained, the existence of large numbers of health and safety representatives suggests a potential for the development of representational/negotiating agendas in which 'health and safety' is added the range of issues on which workplace representatives are able to negotiate and on which workers are able to voice interest. Therefore there would seem to be some strong reasons why trade unions should make greater use of the opportunities the work environment provides to emphasise their importance and legitimacy. Despite this, at first sight it would seem that with a few notable exceptions this does not happen as extensively as might be anticipated.

There are several sets of possible reasons that might help to explain this. They include for example, the question of the practicability of using the work environment as a means to promote trade union renewal. It may be that trade union supported activities of regional/territorial safety representatives are effective in improving health and safety arrangements in some small firms in some sectors, but this is not necessarily be perceived as a cost-effective approach to trade union recruitment by trade unions even if such arrangements result in trade union recognition and increased membership in the firms/sectors concerned— because they are too small to be regarded as worth the expenditure of limited trade union resources on their more widespread achievement.

A further set of reasons revolve around the limited recognition of the significance, of work environment issues both by trade unions officials concerned with renewal strategies and by researchers and observers from mainstream industrial relations disciplines whose work plays a significant role in informing such trade union strategies. Content analysis of mainstream discourse on the role and future of trade unions, reveals very little concerned with work environment, or participative arrangements for its regulation or the relevance of such matters to the future of trade unions. In other words, while health and safety is an issue that is quite high in the consciousness of both workers and wider society and one that clearly fits in a mixed representation agenda that seems to be the currently favoured approach to renewal, whether based around organising or servicing workers, or more wider dimensions²⁰, it does not seem to be strongly identified as such by either trade union officials or the observers that are debating such renewal.

Yet, it would seem to be of vital importance, both to participative OHSM as well as for trade union renewal strategies that representation on health and safety matters be properly integrated into approaches to trade union renewal. If we consider what it is that apparently makes worker representation on health and safety effective (see previously), and also the well established idea that to be effective, participative OHSM should be part of central enterprise management strategy, it is arguable that without this integration,

¹⁹ For example recent analysis of traffic on the TUC's website indicates that health and safety issues are by far its most common subject (Tudor 2003 – personal communication)

²⁰ See for example Gall (ed) 2003, Diamond and Freeman (2001), Woods and Freeman (2002) for details of these currently favoured approaches to renewal

participative approaches to OHSM amount to little more than peripheral tokenism, that at best disguises unilateral managerial strategies to self-regulation, or at worst, hide the absence of self-regulatory strategies of any kind.

A further problem that applies to many of these work-situations by virtue of them being regarded as small firms is that they are exempted from legislative requirements in many countries. There are size thresholds below which employers are often not legally bound to make arrangements for worker representation on health and safety, undertake written risk assessment, or contract with competent prevention services. Yet, reliable data on serious injuries and fatalities inform us that risks are higher in such size ranges than they are in their larger counterparts. Therefore, if the prevailing political and economic strategies of modern market economies makes increased regulation/inspection of workplace arrangements for preventive OHS seem unlikely, and trade union representation in such situations continues to be very weak, then it begs very important questions about how support for regulating self-regulation might be achieved, and especially for reaching the work situations in which self-regulatory strategies currently have least impact?

Although it is seldom articulated, it is a basic tenet of the argument behind trade union representation of workers interests in health and safety that it is a politicised representation, behind which lie issues of power and conflict in the relations between labour and capital. In the decline of the coverage of trade union representation in advanced market economies, and the parallel decline in collective social organisation of many kinds, questions of the continued relevance of trade unions to workers interests are often raised. In such situations alternative means of advocacy of workers' needs in health and safety are sometimes suggested.²¹ There is however, no evidence of which I am aware that suggests that such alternatives are strategic ways forward that could in time substitute for trade unions in supporting the autonomous representation of workers in the self-regulation of the work environment.

It may be however, that there are a range of supports of this type that could be developed to augment declining trade union coverage and which themselves may in time give rise either to new forms of social organisation protecting workers interests or may simply merge with and enhance the coverage of existing structures. For example, in many countries there are support organisations that provide information and advice to workers on health and safety issues. In the UK there are workers' health and safety advice centres, hazards centres, citizens advice centres and occupational health and safety activists groups, all of which to some extent augment information and co-ordination services provided by trade union. Similar arrangements can be found in other countries. In Australia there was considerable development of workers health centres during the 1980s and as Le Nevez and Strange (1989) have suggested, they provide an important element in the overall infrastructure of support for workers' participation in OHS. Moreover, British reviews of such worker orientated advice suggests that it is particularly important

²¹ For example, in the UK and other European countries various initiatives aimed at health promotion sometimes promote such advocacy. In Australia some workers' compensation authorities have employee advocate units for workers who do not belong to trade unions. Rarely however, does such advocacy fully share or represent workers' autonomous and normative interests

in situations such as small firms where workers and employers and workers jointly have very limited access to the kind of support that is commonplace in larger organisations (Walters 2002). Alliances between worker health and safety activists and local environment groups or safer community groups have also been postulated as examples of further ways of widening and supporting participative approaches to improvements in work environment issues. All of these initiatives and alliances can and do act in support of participative health and safety arrangements in the kind of work situations in which trade unions and conventional representation is weak or absent, and while they have a potential to link with and augment arrangements made by trade unions, or preventive services. However, so far, they are small and rather isolated occurrences and such potential as they possess has yet to be both more fully researched and realised.

Conclusions: More questions than answers?

There are important differences in the valuation and appreciation of the paradigm shift involved in post Robens approaches to regulation²². As I have noted, some commentators have regarded the change as the emergence of a new “reflexive” strategy that aimed at achieving more sophisticated ways of regulating and facilitating self-regulation of the work environment (Ayres and Braithwaite 1992, Wilthagen, 1994, Gunningham and Johnstone 1999, Wilthagen, 2000). But others see it as an example of deregulation and state withdrawal, masked by a business-like semantics. It is indeed true that the *leitmotif* of state policy on OHS in recent times has been an economic one. The costs of work-related injury and ill-health (calculated to represent a loss of anything from 1 to 5 per cent of GNP) has helped to ensure that slogans such as ‘good health is good business’, keeping workers ‘healthy happy and here’ and the ‘business case’ have come to dominate the rhetoric of governance of the work environment. Links between the administration of prevention systems and those aimed at returning people to work/keeping people in work and reducing the costs of health related absence have been made increasingly in recent years even in national systems in which the subjects had been kept separate quite deliberately over the previous hundred years or more²³. At the same time there has also been a marked tendency in national systems, if not to move overtly towards deregulation (as has been the case in some systems), then at very least to emphasise the limits of state intervention. In these scenarios as Frick *et al* (2000) have pointed out, regulatory provisions aimed at regulating self-regulation and OHSM, can be regarded in a number of different ways. They might for example be seen as:

- The key method in which ‘systematic OHSM’ is of paramount importance in making self-regulation work and lending OHS policy a transparent and preventive character,

²² As indeed there were in the reception of the Robens Committee’s original report — see for example Nichols and Armstrong (1973), (Woolf, 1973) and Dawson *et al* (1988) for a critical discussion of the self-regulatory approach that it advanced.

²³ Witness the case of the UK for example. The recent moves of the national regulatory administration of preventive OHS, the HSE into the Department of Work and Pensions which also handles compensation and benefits in relation to absence from work has taken place at the same time as there has been a major increase in political pronouncements about joined up governance, the links between productivity and keeping people in work/returning them to work and reducing the costs to the state of sickness benefit claims.

enhancing the participation and influence of workers and ‘managing’ to contribute to a better working environment

- A ‘paper tiger’ in which such ‘systematic OHSM’ becomes synonymous with further bureaucratisation, technocratisation and uprooting of OHS from shop floor realities
- A sham in which OHSM is merely a disguise behind which a hidden and largely economically driven agenda of deregulation is in operation.

In this paper I have concluded (as indeed as Frick *et al* also conclude), if the basic tenets that are known to be supportive of participative self-regulation are not in place the sham/paper tiger hypotheses are more likely to be representations of reality than the more positive interpretations of ‘self-regulated OHSM’ being a key method for improving the work environment. In this respect it is perhaps worth noting that goal-setting approaches to self-regulation have made few specific attempts to support the representation of workers or systematic participative health and safety management amid the changing organisation and structure of work and the restructuring of the labour market. They rarely directly address the consequences for representation that are posed by, for example, growth in part-time and temporary work, outsourcing, the use of agency labour or home-workers. Nor do they often explicitly provide measures for representation of workers in small enterprises or multi-employer worksites despite unprecedented growth in these areas. There are also no measures to support representation in the face of fragmentation of representative structures that are a frequent consequence of downsizing, franchising or privatisation. Yet all these developments are features of the current experience of work. Moreover, the growth in their importance in the economy has taken place alongside the explicit exemption of some of them (such as, for example, micro-enterprises) from regulatory requirements governing representative participation as well as other aspects of participatory OHSM. In such scenarios it is hardly surprising that there is some scepticism concerning self-regulation.

So how are such supports to be achieved in an environment in which there is little hope of seriously increased resources for inspection and control of OHS or a return to command and control modes of enforcement?

The most significant governmental approach to this situation, emerging to varying degrees across most advanced market economies in recent years is one in which pressures within the wider social and economic environment are advocated as the means to enhance the effectiveness of regulation. In this scenario, in transactions involving labour, production and service in market economies, successful outcomes are regarded as being dependent on a variety of environmental factors, much of the locus of control for which lies outside the enterprise and beyond the legal basis of the contract of employment. Exploitation of the (largely) economic pressures evident in relationships between duty-holders and such factors are increasingly regarded as useful means to achieve the ends that are not practicable solely through the means of inspection and control. There are many examples of situations in which such pressures are advocated as push-pull factors or levers to cascade information/action and implement desired OHS arrangements.

They include:

- Client-contractor/sub-contractor relationships
- Relationships between customers and suppliers of goods and services
- Relationships between large and small employers in the same localities – good neighbour schemes
- Relationships between employers and the communities in which they are located and the integration of occupational health and safety issues with wider community safety initiatives
- Joining-up of services/resources for preventive health and safety with others concerning employment, return to work, training, community health, etc
- Use of intermediaries in the business environment to aid in the social amplification of health and safety
- Use of economic incentives and insurance systems to promote OHS arrangements
- Inter-agency relations within and between state regulation.

Although many initiatives used to improve OHS in this way are aimed at employers, and appeal primarily to issues of economic self-interest, also falling into this general approach are the trade union strategies to improve participative arrangements that operate essentially from outside the employment relationship within a firm. For example, as I have discussed, trade unions are currently seeking to represent workers' health and safety interests in small firms, in contracting and sub-contracting and in labour hire, through using regional/territorial health and safety representatives and rights to represent workers with representatives who are not fellow employees. In such situations, access to workers and opportunities to activate joint health and safety arrangements are widely regarded as being both successful and sustainable by trade unions, employers and regulatory agencies (Walters 2001 and Walters 2002). They are also potential strategies for achieving the renewal currently sought by most trade unions in advanced market economies.

However, despite the up-beat claims for the success of many of these initiatives, the reality is both that such schemes are still quite unusual and atypical of wider practices and that the relative newness of many of them means that their evaluation is extremely limited. Claims for their success must be considered with some care and generally there is need for far more robust investigation and evaluation. Writing critically about the usefulness of OHSMS, Nichols and Tucker (2000) declare:

“Government resources for OHS enforcement have never been close to sufficient, so that regulators set priorities and use the scarce resources available to them efficiently. There is a distinct danger that the OHSM system approach to regulation will make a virtue out of necessity and become an excuse for further diminishing the resources for adequate enforcement in the false belief that we have in fact achieved self-reliant workplaces. This is particularly true of any government whose key health and safety message is that co-operation between workers and employers is natural because after all safety always pays. It is fundamental to OHSM thinking and we think it dangerous.”

Arguably, much of current policy advocating greater exploitation of economic and social pressures in the wider environment of organisations to persuade employers it is in their interest to make better arrangements for OHSM, represents a similar effort to make virtues out of necessities and should therefore be viewed with the same degree of scepticism until proven otherwise.

In the final analysis, it is highly unlikely that approaches to sustaining self-regulation through the use of levers and the push-pull effects of the social and economic environment will be effective in the absence of a strong regulatory presence and clear legal rights for the autonomous representation of workers' interests. There is no evidence to suggest that they could be in any way *replacements* for such regulation or workers' rights although in some situations they may be useful *additional* means of achieving their practice. Trade unions remain the single most powerful support for workers' representation on health and safety. Alternative advocacy of workers interests, operating from outside of the established political framework that underpins labour relations is largely non-existent, or where such alternatives do exist they are extremely limited in their development. The failing fortunes of trade unions however, mean that in most countries increasingly few workers are able to benefit from such support. There are also only limited signs that the work environment is perceived by most trade unions and their advisers as a subject fundamental to their efforts to achieve renewal. Regulation and state inspection and control of the work environment currently fit rather uncomfortably with governmental policies designed to enhance the withdrawal of the state from a central role in economic and social regulation. None of these scenarios offer an encouraging prognosis for the future of work place health and safety arrangements under 'regulated self-regulation'.

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