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Bullying
It’s on the national radar, and experience shows that the problem is likely to remain

WorkSafe Victoria: just the beginning, but can it last?
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The tragedy of the home insulation debacle has highlighted health and safety issues of significant importance. Sadly the opportunity for informed debate about root causes has been overshadowed by the political brouhaha that has left the public with the impression that ministers of the crown are responsible for failings at the work place.

While not in any way wishing to suggest that the processes underpinning the insulation rebate scheme were satisfactory, I wonder where has been the public debate around the failings of the insulation installation contactors in regard to the management of safety.

Where has been the public debate around the design of the insulation materials and techniques, especially the foil insulation? Where has been the public debate around the fact that some roofs contain exposed live electrical cables before the insulation is installed?

Some newspaper articles and TV news forums have touched on the questions but are inevitably drowned out by the focus on scheme administration, which seems to have more appeal. There has been a huge opportunity to highlight and discuss roles and responsibilities with regard to occupational and public safety and approaches to risk management and instead we have seen blame mongering and political spin.

The lessons with regard to the safety management failings of the insulation scheme are important. Climate change is accelerating the development and application of many new technologies in energy generation; bio-fuels; waste management and recycling; etc; etc. and the processes we employ to work and live safely with these must be managed appropriately and not overridden in haste. Upstream of course is the application of Safe Design principles; the insulation debacle offers a salutary lesson with regard to ignoring these.

One would hope that Safety Professionals are hunted down to participate in the design of schemes and the introduction of new technologies, being highly valued for our knowledge, experience and evidence-based practice. Yet, as we all know, we are too often having to bang on doors and are with reluctance permitted to join in.

In this edition of OHS Professional we report on the closure of the School of Risk and Safety Science at the University of New South Wales; a decision that should concern us all. The loss of another centre of research and education is perhaps symptomatic of the extent to which health and safety knowledge is mis-understood and undervalued.

I refer readers to a recent article by HSE Chair Judith Hackitt in the Science in Parliament magazine. I found refreshing the strength of her argument for the role that knowledgeable and skilled specialists within her own organisation play in identifying new and emerging health and safety problems, and controlling risk at source.

As Professionals we could do well to rehearse similar arguments and keep them up our sleeves, ready to pull out at times of necessity. Hopefully we will eventually get our selves in to the position where we are finding the door not only open but we are actively sought by governments and employers for advice regarding design and implementation of processes and programs before they injure people.


Dr Steve Cowley, FSA
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Ending two years of a steady rise in salaries, this year safety executives’ remuneration packages have declined by an average of $59,000, according to Victorian recruitment firm, SafeSearch.

“The 2010 SafeSearch annual salary survey demonstrates that when times get tough, talk of safety being a core part of business may be thrown aside,” managing director of SafeSearch, Julie Honore says.

The research indicated that remuneration packages for a general manager of safety fell 21 per cent from $280,000 to $221,000.

The 2010 annual salary survey collected data from 59 companies and 350 respondents, primarily drawn from the ASX 200, according to SafeSearch.

Safety officers however saw a slight uptick of 6 per cent, with average packages increasing from $73,000 to $77,000. Queensland officers appeared to be in the best position in Australia. Salaries rose 26 per cent.

A note to safety officers that lack qualifications was that demand continues for “higher formal qualifications”, according Honore.

The company’s last survey had shown that salaries rose 10 per cent for two years running. It warned in its last survey that it expected salary increases to flatten off as the market softened.

“The 2010 SafeSearch annual salary survey demonstrates that when times get tough, talk of safety being a core part of business may be thrown aside,” Honore says. “When cost-cutting kicks in, companies that only pay lip service to safety readily make safety roles redundant, particularly at the general manager level.”

But good times may be ahead, said Honore.

“Western Australia and Queensland are already starting to experience skills shortages and it won’t be long before other states follow. Companies anticipating salary hikes, particularly in the highly-paid resource sector, have tied their people in to long-term incentives.”

Vale Katrina Wakeling, CPMSIA.

The Safety Institute of Australia lost one its brightest young members with the sudden passing in December, 2009 of Katrina Wakeling, CPMSIA.

Katrina was an enthusiastic and professional practitioner, much admired and respected by those with whom she worked and her peers in the Institute. She was a regular participant in activities and events in the Victoria Division and we will miss her stimulating and informed contribution to the discipline of OHS.

We are currently preparing an article about Katrina for publication on the SIA website and in the next edition of this magazine. Katrina’s mother is also preparing a book of memories to pass on to Katrina’s 9 month old son Lewis when he is older. We would welcome contributions from any member who knew or worked with Katrina. Please contact the SIA’s National Office if you would like to submit something for inclusion in the SIA article or the family’s memory book.

We are grateful for the contribution this truly remarkable young woman made to the Institute and the profession. Vale Katrina.
A plan is in place to develop a strategy to improve the safety of railway level crossings, which claims 37 lives each year.

The strategy is being developed by the Australian Transport Council, which has planned to release a draft of it by December this year.

Key plans include devising risk management strategies for Australia’s 8,900 rail level crossings, trialling new alert technologies for road users, data capture for incidents, and a nationally consistent education and enforcement plan.

Western Australia (WA), which has 1,251 level crossings, will play a key role in the program, and has recruited former West Coast Eagles AFL star David Wirrpunda as an ambassador for the new National Road Safety Council.

“I have a personal interest in road safety and I have seen the devastation fatal and serious road crashes have on families and communities,” Wirrpunda said.

WA will tip $20 million into rail level crossings in 2010, according to WA Minister for Transport Simon O’Brien, but he added that it was vital to have a national approach.

The National Transport Commission (NTC) has welcomed the move. “Reducing crashes at railway level crossings is essential to improving the safety of Australia’s road and rail networks,” NTC’s senior manager of safety Dr Jeff Potter said.
Western Australia’s WorkSafe this month kicked off a crane inspection program due to ongoing concerns over mechanical failure.

“There are literally thousands of these types of cranes in use across the State – in fact, most factories, warehouses and workshops have at least one of these cranes,” said WorkSafe WA Commissioner Nina Lynhe.

“WorkSafe inspectors have encountered many mechanical failures with these cranes over the years, and felt that this warranted a program to check as many of them as possible.”

A potential risk in WA is the age of cranes, according to WorkSafe WA’s inspectors.

“Our inspectors want to make sure that they are being properly maintained so they do not fail and cause an injury,” said Lynhe.

Inspections will be on the look out for unregistered crane designs, crane modifications, that access channels are safe, maintenance and inspection record keeping, operator licensing, and lifting gear such as chains and slings.

“Under WA’s occupational safety and health laws, employers have a responsibility to properly maintain items of plant in the workplace,” Lyhne said.

“Employers also have an obligation to ensure these cranes are being maintained, inspected and operated in accordance with the manufacturer’s instructions, but in some cases the manufacturer is no longer in existence and Australian standards then must be followed.”

WorkSafe Victoria is offering free workshops to businesses that want to know how to manage the problem of bullying.

The regulator says its research shows that 14 per cent of the Victorian workforce experience bullying.

“Bullying is repeated, unreasonable behaviour directed to an employee or group of employees that creates a risk to health and safety,” it said.

It has made available its bullying poster for download, to raise consciousness at the workplace.

Its guide provides practical advice on how to prevent and respond to bullying at work, and provides a reminder of employer and employee obligations under law.

Additional information it has made available includes an employer checklist for managing bullying, a bullying risk indicator, and advice for those that believe they are the victim of bullying.
Victoria saw its sixth fatality within six months in late February, the latest a 26 year old worker who was believed to have been electrocuted. The incident occurred apparently in the absence of colleagues, according to WorkSafe Victoria.

“The man was running an electric press used to mould rubber gaskets and seals and was found by workmates around 11.30am,” it said in a statement.

WorkSafe is investigating whether he had died as a result of an electric shock. It has place safety improvement notices on the suspect machine and another similar one that was next to it.

WorkSafe said it was the fourth fatality in 2010, which was down on last year's six at the same period. Last year 30 people were killed at work in Victoria - almost twice the 16 that occurred than during its 2007/08 financial year. “This is an intolerable number and one that we do not have to repeat,” said WorkSafe’s Acting Director of Health and Safety, Stan Krpan.

“It takes a commitment from the heads of companies, their managers and supervisors through the workforce to make it happen.”

“Simple measures make a real difference not just in preventing deaths but the many serious injuries which have life-changing consequences for individuals and their families.”

In the six months to December 2009, Victoria saw 14 work related deaths in the and equally as important. During the year 72 life threatening incidents were recorded.

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*When: 19:00 - 21:30, Monday 19 April 2010*
*Where: BMW The Edge at Federation Square, Melbourne*
*About: Professor Patrick Hudson from the Netherlands’ Delft University of Technology, Department of Safety Science will share his new vision for safety - one where it becomes possible for professionals to do dangerous but profitable things without suffering the potential adverse consequences because they have a more realistic and well-founded understanding of what it means to be safe.* Book online via the Safety In Action 2010 Conference registration process or contact the SIA National Office on 03 8336 1995 or natadmin@sia.org.au for assistance.

**Safety In Action Conference 2010**

*When: Tuesday 20 April to Thursday 22 April 2010*
*Where: Melbourne Convention Centre*
*About: Hear the latest on harmonisation, gain insights from industry leaders, learn best practice examples, and network with colleagues and clients at Australia’s largest safety conference. Keynote speakers include Captain Terry Vickers, Executive Director Skytraders, Antarctic Aviation Division, Australian National University Professor of Sociology Andrew Hopkins, and WorkSafe Victoria’s Acting Executive Director Stan Krpac.*

**Safety In Action Trade Show 2010**

*When: Tuesday 20 April to Thursday 22 April 2010*
*Where: New Melbourne Convention Centre*
*About: Safety In Action and Melbourne Materials Handling 2010 feature the very latest safety products and services showcasing: installation systems, fire and emergency training and fire retardant garments and attracting architects, facility managers, specifiers, security consultants and building managers. Other features at Safety In Action include Corporate Health, Building & Height Safety, Training & Technology and Electrical Safety. Register online at www.sia.org.au*
The High Court of Australia recently handed down a landmark decision in the case of Kirk v Industrial Relations Commission of New South Wales; Kirk Group Holdings Pty Ltd v Work Cover Authority of New South Wales (Inspector Childs) [2010] HCA 1 (Kirk v NSW IRC) which criticised the way in which WorkCover formulates charges under the Occupational Health and Safety Act 1983 (NSW) (the OHS Act).

It is significant because the High Court also criticised the NSW Industrial Relations Court’s “settled” view that it was not necessary for the prosecution in such a case to demonstrate with particularity what specific measures the defendant(s) should have taken to ensure the safety of persons in the workplace.

THE FACTS
Mr Graham Palmer was employed by Kirk Holdings Pty Limited as the manager of a hobby farm near Picton in the State of New South Wales. Mr Kirk, who was the director of the Company, did not have any experience in farming and did not have a day-to-day role in the operation of the farm.

Mr Palmer who had run a large property of his own and who was considered to be a very competent person, took all responsibility in the running of the Kirk farm, including the implementation of safety measures. On the recommendation of Mr Palmer, the Company purchased an All-Terrain vehicle (ATV).

On 28 March 2001, when Mr Palmer was towing three lengths of steel using the ATV, he left a purpose-built road and drove overland down the side of a hill. The ATV overturned and Mr Palmer was killed.

Mr Kirk and the Company were charged with offences under sections 15(1) and 16(1) of the OHS Act for failing to ensure the health and safety of Mr Palmer and the contractors working on the farm. Mr Kirk was charged because he was concerned with the management of the Company.

Mr Kirk and the Company pleaded not guilty to the charges, relying on the defence in section 53(a) of the Act that it was not ‘reasonably practicable’ for Mr Kirk and the Company to comply with their duties, since it was unforeseeable that Mr Palmer would ride down the side of the hill as he did. Justice Walton of the NSW IRC found both Mr Kirk and the Company guilty of the offences, and accordingly fined Mr Kirk and the Company $11,000 and $110,000 respectively.

Mr Kirk and the Company sought and were granted special leave to appeal to the High Court.

THE HIGH COURT
The High Court unanimously quashed the convictions of Mr Kirk and the Company. In its reasoning as to the invalidity of the convictions, the High Court addressed several key issues regarding the interpretation of the duties arising under the Act and the way in which the matter had been prosecuted.

The charges against Mr Kirk and the Company did not identify what measures should have been taken to prevent the risk of injury to Mr Palmer. In addition, aside from the failure to ensure that only trained people used the ATV, the charges did not specify the grounds in which Mr Kirk and the Company had failed to ensure Mr Palmer’s health and safety.

The High Court found that these deficiencies in the particulars were unfair because it deprived Mr Kirk and the Company from ‘knowing what measures they had to prove were not reasonably practicable’. This prevented Mr Kirk and the Company from properly understanding the case against them.

The High Court was required to judge the reasonableness of
any precautions taken by Mr Kirk and the Company with the benefit of hindsight. The High Court rejected that the obligation should be interpreted with the balance of hindsight. It held that the provisions of the OHS Act were not intended to operate in a way which required an employer to establish that there was no reasonably practicable measures, of any kind, which could have addressed the risk in order to defend a prosecution. The High Court commented that if considered in that manner, it was always possible to think of something further that could have been done.

Accordingly, the High Court found that WorkCover failed to give proper particulars of the alleged offence committed by Mr Kirk and the Company. In doing so, the High Court overturned a long line of case law (notably in NSW and Queensland) which held that, where the onus of proof to establish a defence is on the employer, the regulator is not required to particularise what it alleges the defendant should have done to prevent the breach.

The High Court further rejected the previously accepted principle that the absolute nature of the obligation meant that the prosecution must only prove that a risk existed and that it was not eliminated by the employer. The High Court said that the provisions relating to offences and defences in the OHS Act were not intended to operate this way, that is:

“…… it is necessary for an employer to identify the risk present in the workplace and to address them, in order to fulfil the obligations imposed by ss 15 and 16. It is also necessary for the prosecutor to identify the measures which should have been taken. If a risk was or is present, the question is – what action on the part of the employer was or is required to address it?”

Therefore, the High Court found that WorkCover had failed to identify what Mr Kirk and the Company could have done to prevent the incident.

Justice Heydon made significant comments in relation to the supervisory obligations of an employer with an experienced employee who has been reckless:

“It is absurd to have prosecuted the owner of a farm and its principal on the ground that the principal had failed properly to ensure the health, safety, and welfare of his manager, who was a man of optimum skill and experience – skill and experience much greater than his own – and a man whose conduct in driving straight down the side of a hill instead of on a formed and safe road was inexplicably reckless”.

CONCLUSION

The High Court’s decision represents a fundamental shift of power in the NSW system, and returns the previous unbalanced OHS laws back into line with that in other States. The decision will impact on the way in which prosecutions are commenced. The WorkCover’s proceedings against employers for a breach of the OHS Act will now be required to specify not only the ‘risk’ which gave rise to the incident but also what reasonably practicable measures an employer should have taken to prevent an accident or injury.

The Kirk v NSW IRC decision will also have implications on the prosecution of directors and managers and the responsibilities of these people in their roles. The decision will lead the way for more clarity by WorkCover in such prosecutions.

“The High Court’s decision represents a fundamental shift of power in the NSW system, and returns the previous unbalanced OHS laws back into line with that in other States”
Is fatigue mining-construction’s hidden killer?

Is fatigue being overlooked as the underlying cause of accidents on major construction sites? One researcher believes it is, and she suspects the problem is worse for remote Australian construction workers

BY LIAM TUNG

In 2006, when University of Sydney researcher Margaret Chan first asked ex-patriot executives at a well-known China-based oil-processing joint venture what was the cause of accidents at its China-based facility, she was told that workers couldn’t read safety signs, and therefore didn’t follow safety procedures.

The conclusion was, in China’s context, understandable. The workers predominantly came from rural China, which, given the country’s ethnic and linguistic diversity, meant that few could understand the local languages of the two operations - Mandarin and Cantonese since its operations were based in Guangzhou (in China’s south) and Shanghai.

“When I asked the expats what they thought were the main risks,” says Chan, “they said these people are migrant workers: they cannot read safety signs, and they don’t know about OHS.

Their belief was that if we train them - provide a carrot and stick approach - it will solve the problem.”

Chan took note of their conclusions but also questioned the decisiveness of their answer. Her question to the expats was the precursor to a survey that, according to Chan, delivered surprising results.

What she didn’t know was that after asking a sample of workers, safety managers, and executives in a survey to identify one risk out of a possible 290 that she had listed, the unanimous answer - across both operations - was fatigue.

Seventy-eight per cent had identified fatigue as the top risk. “I didn’t think this was the issue that would come out on top,” she says. “I concluded this is a big issue.”

Chan’s exploration of fatigue within large scale construction began in 2006 and has since canvassed four major sites within China as part of a PhD within the University of Sydney’s Faculty of Engineering and Information Technologies.

Chan was granted over $100,000 by the Federal Government to conduct the research, and the organisation that was the subject of the study agreed on the basis that it was at no cost to it, while her findings could provide insight into its operations. It was the first time a PhD student had been granted such access to a Chinese operation of this scale.

And while she openly concedes that China has lower safety standards than Australia, local operations, including a major Victorian project underway and local mining giants in Western Australia, are paying attention.
Chan is not the first to identify fatigue as a major risk factor in the use of heavy machinery. Indeed, when she discovered that respondents had, in contrast to the executives’ assumptions, identified it as the leading risk factor, she turned to Australia’s pre-eminent expert in the field, Professor Drew Dawson, director at the University of South Australia’s Centre for Sleep Research.

“I asked him how would you interpret the results, what are the variables, and what are the consequences [of the findings],” says Chan. “He’s the one that mentioned the relationship between fatigue and blood alcohol levels.”

Dawson had been working on a method to calculate the effect of staying awake on a person’s mental performance. His calculations indicated that staying awake for 17 hours is equivalent to having a blood alcohol level of 0.05, which doubles to .01 at 21 hours.

But while Chan could draw inferences from this on the use of machinery at construction sites, her own research indicated fatigue’s effects could have much wider consequences, in particular at remote construction sites, typical of Australian mining regions.

Respondents to Chan’s survey - which covered near or actual accidents as well as the use of personal protective equipment - were asked to leave their mobile phone numbers on the response form (but not their names, which enabled an anonymous follow up call).

“Once I got the results, then I went out to identify the people who chose fatigue as the lead risk, and then (via a phone call) I found out who had a near miss or an accident,” she says.

The second stage of the research involved data mining the results, which says Chan, revealed a strong link between fatigue and the failure to use personal protective equipment (PPE).

“The data mining analysis showed that fatigue is highly associated with improper use of PPE. It turned out that the probability of not wearing it is high when fatigued,” she says, deducing that staff tended to either forget or skip basic safety procedures when stressed.

This could have a significant impact on the analysis of accidents that occur on the workplace, in particular, as it had on one of the sites she had been researching, where a worker had been killed when the crane he had been operating had toppled over. It was impossible to identify whether the operator had not followed the correct procedures, but nor was it possible to identify whether fatigue played any role.

One of the issues that Chan noticed in relation to safety during her research was that many organisations viewed safety as a purely procedural matter: if staff follow the correct procedures, accidents won’t happen was the view she found.

“I say if you don’t address fatigue, even if you send them to training, they might not follow the correct procedures,” says Chan.

While her research to date has only covered fatigue at operations where heavy construction machinery is in frequent use, she intends to next look into fatigue’s underlying causes, which is also why she believes her findings are so relevant to Australia.
Rural Chinese, remote Australians
Chan was surprised by the welcome she got by the workers she had interviewed at the two oil-processing operations in China. She suspects, because she was there temporarily and a woman, that she was able to talk to them openly, and found herself in a counsellor-like role.

The problem for the men working there was that many, including senior management, were separated from their families for long periods. The men, known as “transient husbands”, wiled away time at night playing cards, smoking, chatting and drinking.

The isolation of workers in Australia’s mines is also a well-documented phenomenon, which appears now to be giving rise to an increase in HIV rates amongst mining workers. Though not strictly a workplace issue, it is a higher risk for those that work in remote regions.

The relationship between isolation and fatigue may seem tenuous on paper, but as Chan points out, when you put workers in a harsh, remote environment, it places greater stress on at least one of three fatigue categories - physical, mental and psychological - because workers don’t get the time that normal nine-to-five workers get when they go home.

Add this to the type of work being asked of these people, and you get a potentially dangerous cocktail.

“Construction,” says Chan, “fits all three because it’s monotonous, you have no control over your work - it’s a menial task - and there’s the psychological stress of social alienation because you’re working in isolated places.”

Of the research she is currently working towards setting up, Chan says, “I’m not dealing with residential construction, but oil and gas projects, such as in Western Australia, where they’re building in remote areas - where workers have to leave their families and live in camp-like situations.

“I’ve spoken with a few people in Western Australia that related to that. It’s the mining projects that are out in the wilderness, where the nearest town is six hours drive away.”

Most of the workers in her research in China were also shift-workers, compounding fatigue by working at odd hours. Chan found that removed from family for long periods, workers experienced insomnia after about three to four months on the job.

A problem she has encountered in Australia is that while fatigue is well-documented for the transportation industry, fatigue on construction sites is overlooked, particularly in the analysis of an incident.

Indeed, the Productivity Commission’s recent OHS draft benchmarking report of Australian businesses, which drew figures from Safe Work Australia and state regulators, lacked any acknowledgement of fatigue in its assessment of causes behind injuries that lead to time off work. Fatigue as a causal category was also only linked to track driving.

Chan has travelled to mines in Calgary and Alberta in Canada and reckons workers there are facing similar conditions. She argues isolation has a significant impact on the ability of workers to recover from fatigue, in turn impacting safety outcomes at work.

But one of the problems with fatigue, in terms of employer-employee relationships at remote sites, is that it is still viewed through the prism of the nine-to-five job.

“If a worker is employed at a residential construction site, you return to your family afterwards. You repay your sleep deficit,” says Chan. “But if it’s a remote site, people leave their families behind.”

“One of the significant findings was that companies think that they don’t have a moral responsibility for workers after they have finished work. The attitude is that at the end of shift, it’s the end of the employer’s responsibility.

“I’m trying to show them that the organisation has a moral responsibility - not of kindness of heart, but if you look after the welfare of workers, then your looking after your bottom line.”
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UNSW’s Risk and Safety School closure: lacks “impact”

The University of New South Wales (UNSW) has sounded the School of Risk and Safety Science (SRSS) death knell, and while there is serious concern over its loss, the university says pure science will deliver a greater impact than it could, writes Liam Tung.
By 10 December 2010 UNSW expects to have completed its closure of the school, leaving some 250 students out of the course they had signed up to, but perhaps even more worrying is the loss of what some believe is the only institution in Australia that deals with a key area of workplace risk: chemical hazards.

UNSW announced its decision late last year to “disestablish” the SRSS. The closure, according to it, was made on the basis of findings by a “panel of international experts” which had conducted a review of the Faculty of Science in 2008.

The review, previously accessible on UNSW’s website, has since been locked to the public, and outlines the university’s strategic objectives behind ending the school.

The panel recommended the Faculty of Science, within which SRSS is housed, focus its resources on core subjects such as maths, physics, chemistry and psychology. SRSS on the other hand falls under the now seemingly unpopular label of “applied science”.

Its research areas include fire and explosion risks, health risk management, and toxicology, which dovetails with several sectors, including health, food and transportation industries. In terms of training, it also offered applied ergonomics related to the prevention of slip injuries, infection control, management of major hazard facilities, and handling of cytotoxic drugs.

Programs at the level offered by SRSS are an endangered species in Australia, according to Jeff Simpson, a Melbourne-based regulatory affairs and chemical hazard classification consultant for HazTech Environmental.

Such schools are fragile too. The survival of such institutions within Australia has depended on the drive of a single person - in the case UNSW’s SRSS, Dr Chris Winder, a professor in applied toxicology who is recognised as one of Australia’s top heads.

“In our field,” said Simpson, “the work being done by Dr Winder is that the bleeding edge of training at a tertiary level standard. There is no other course.”

A comparable course did exist at Victoria’s Deakin University, according to Simpson, however that was closed after its head was poached by industry, leaving SRSS as the only offering at this level.

“I’m appalled that we can allow this to happen,” said Simpson. “The university is closing the one and only place of excellence in this field.”

Simpson said he has written a letter to every single member of parliament in Australia - except for the Prime Minister, Kevin Rudd - appealing for help in reversing the university’s decision.

“There are no alternative university schools in Australia at this level, with such a relevant focus on research, teaching and training to fill our industry’s needs,” he said.

Closing SRSS: a bad financial move?

Ironically, the timing of school’s closure has come under remarkably similar circumstances to its 1986 birth: at a time of major regulatory change, this time triggered by the harmonisation of state and territory OHS laws, which amongst other things has included a review of the control of hazardous workplace chemicals.

And while other institutions such as University of Queensland appear to have capitalised on this, launching its OHS degree this year, UNSW is not interested in the opportunity.

UNSW has faced tough times in recent years. In 2006, the year Dr Fred Hilmer was appointed vice chancellor, saw the university’s $10 million operating loss turn to a $22 million surplus. But since then it has suffered consecutive losses with that surplus vanishing, then ballooning into an $88 million loss by 2008.

Hilmer, Fairfax’s former chief, has blamed the university’s alumni component of its board for poor financial decisions, including its failed investment in Singapore. However, it appears that he has supported this strategic choice at the expense of the university’s financial gain.

Safety’s parent faculty, Science, is believed to have faced budget overruns last year of about $3.5 million, however cost-cutting has been denied by UNSW as the reason driving SRSS’s closure.

A spokesperson for the UNSW’s vice chancellor Hilmer late last year told Fairfax newspaper, the Sydney Morning Herald, that the school’s closure was “not a matter of cutting budgets” for the Faculty of Science, and that the decision was “strategic”.

At least on this point at least Winder agrees with the university: money is not the issue. In fact, if his figures are accurate, UNSW will lose money by closing SRSS, which last year generated revenues of $5 million.

“The [SRSS] budget is 48 per cent of that, so the university gets a fair chunk of that,” Winder told OHS Professional.

So why is UNSW determined to kill the school?

The school has faced a turbulent history at UNSW, which has over the years pushed to promote and perceive itself as an “elite” university. This, according to Winder, appears to be the reason UNSW has made its decision.

“The decision is political because the reasons they have given [for closing SRSS] are not valid. We earn more than we spend. The decision seems to be that if the faculty [of Science] can’t get rid of maths, psychology and physics, then let’s get rid of safety,” he said.

SRSS has been shunted from faculty to faculty over the years. Initially placed within the Faculty of Engineering in 1986, it

“We earn more than we spend. The decision seems to be that if the faculty [of Science] can’t get rid of maths, psychology and physics, then let’s get rid of safety”

Toxicology professor, Dr Chris Winder

continued on p 18

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later moved to the School of Applied Science, which was itself disestablished, resulting in Safety’s shift to the Faculty of Science and Technology. It too however was shut down in 2001, landing the School of Safety Science beneath the Faculty of Science, from which it will soon be evicted.

The Safety School’s last brush with “disestablishment” was in 2003, three years prior to Hilmer’s 2006 appointment as vice chancellor. Minutes from a meeting by the university’s Academic Board reveal that it planned to recommend to the then vice-chancellor to have it “disestablished”.

An independent review however reversed the decision. Prior to its change of heart, the disestablishment strategy was similar to today’s: find alternative homes for portions it wants to keep.

The only part of SRSS UNSW has kept is its Risk Management Program which has landed a spot at Hilmer’s old haunt, the Australian School of Business (formerly the Australian Graduate School of Management), which he headed up prior to his stint at Fairfax. From 2011 the Risk Management Program will become an ASB Masters of Risk Management, while other parts will be blended into commerce.

**The review rigged for safety’s failure**

But for the larger portion of SRSS, death is imminent and its seed was planted in the 2008 review: its scope effectively delivered a self-fulfilling outcome in terms of its findings and subsequent recommendations for SRSS.

While research, a strength of the Faculty of Science, fell well within scope, Safety’s strengths - its standard compared to other Australian OHS degrees; its value to the community; and contributions to, for example, WorkCover NSW’s health efforts - did not. It strengths were not even considered in its evaluation.

“We weren’t presented well. The review said our research wasn’t very good and suggested it should be let go,” Winder said. “But the review was on research only and didn’t evaluate teaching programs and the value to the community.”

Former SRSS student and now general manager of Sydney-based Safety Engineering and Technical Services consultancy, Ross Underwood, agrees that there will be a significant loss to the community.

The real loss, he says, is the serious dent it will have on teaching OHS management and its capacity to address a work system that has a reactive approach to safety.

“[The system] ensures that employees at workforce entry across every vocational stratum - from unskilled to supervisor/manager level - have virtually no OHS skills or knowledge until they find out what they need to know,” Underwood told OHS Professional.

“While the research function would be an important loss, the real concern to me is the loss of teaching,” he said.

“There is a pathetic lack of OHS management knowledge ... in management systems, in industry, commerce and government throughout Australia and particularly in the most populous state NSW.

“Gross over-reliance is placed on experiential learning being provided by the employer in the occupational environment, caused by lack of available teaching resources.”

Besides this, Underwood said the SRSS has been instrumental in developing a new matrix on the incompatibility of chemical substances - “a topic with widespread ramifications across many applications and with relevance to vocational and public safety,” he said.

UNSW’s recently appointed Dean of Science Professor Merlin Crossley however has brushed aside the immediate and practical implications of the school’s closure.

Crossley has firmly rebuffed an attempt by key a figure within the state’s regulator WorkCover NSW to have it reconsider its decision.

A WorkCover executive had in December appealed to Crossley on the basis that SRSS had provided health and safety surveillance education to authorised medical practitioners, which the regulator viewed as a valuable contribution to the community, while its closure would be a major loss to expertise in fire and explosion hazards Australia-wide.

Signalling the university’s determination to shut the school, Crossley replied that “a firm decision has been made to proceed with the disestablishment, with effect from 10 December 2010.”

“The university has had to prioritise its limited resources,” Crossley continued, “and is determined to channel those resources in the Faculty of Science in research areas that it perceives will have even wider and deeper impact in the long term.”

Crossley’s opinion is that the “university, as a whole, will remain relevant to the NSW safety professional community” and he was confident it could work with WorkCover NSW in other ways.

“Gross over-reliance is placed on experiential learning being provided by the employer in the occupational environment, caused by lack of available teaching resources”

Former SRSS student and now general manager of Sydney-based Safety Engineering and Technical Services consultancy, Ross Underwood
WorkSafe Vic’s profits up, but deaths up too

Rising unemployment may have helped WorkSafe Victoria’s profits, but fatalities in the state in the past six months are at an alarming 14

BY LIAM TUNG

While WorkCover South Australia’s $1.3 billion “unfunded liability” has been seized upon by the state’s opposition as a key election platform, WorkSafe Victoria has turned around its $1.42 billion profit loss into a $686 million profit for the half 2009-10 financial year.

The regulator and insurer released its half year results in early March. WorkSafe Victoria has attributed its turn around to an improved investment market, and to falling workers’ compensation claims, which were down from 10.8 to 10.32 claims per thousand workers compared to the same period last year.

Chairwoman Elana Ruben said the drop may have come about by increased unemployment in the state, saying that “reduced hours worked during the economic downturn may have helped cut the injury claims rate”.

Indeed Victoria saw a half a per cent rise in unemployment between December 2008 to December 2009 to 5.2 per cent, while it has seen a significant rise in part time employment, according to the latest figures by the Australian Bureau of Statistics.

Ruben was also alarmed by Victoria’s “significant increase in work-related deaths with 14 work related fatalities” in the six months to December 2009.

“This is a shockingly high number and requires broad community involvement if it is to be reduced,” she said.

WorkSafe’s target in 2008/09 was “fewer than 16 deaths”, based on the previous year’s “historic low” of 16 fatalities. Unfortunately, according to Ruben, there have been five more fatalities since December, leaving it eight short of last year’s 27 fatalities, a year it saw 72 life threatening injuries.

“Our system is set up to encourage prevention, enforce the law and support those who have been hurt, but the obligation begins in every workplace to ensure employers, managers, supervisors and workers do what they can to build safer workplaces,” said Ruben.

The regulator and insurer’s financial boon has come as it kicked off a major TV advertising campaign last month to revitalise interest in its free health check-up offer which was launched to a mild response last year.

Crunch time for Queensland and SA

Other states have yet to release half year financial results, however South Australia’s insurer and regulator has become a key plank in the state’s Liberal opposition leader Isobel Redmond WorkCover reform strategy.

Redmond has spearheaded its WorkCover campaign with its $1.3 billion “unfunded liability”, reported in its half year results last year. WorkCover is expected to release updated figures at the end of March.

Thanks to the financial crisis, all state regulators saw their financial positions erode, including Western Australia’s Workcover which saw $10 billion wiped off its profits compared with its 2008 results, leaving it with a $2 billion after-tax profit at the end of financial year 2009. Its outstanding liability however was just $29 million in contrast to SA.

Queensland WorkCover’s “outstanding compensation liabilities” meanwhile had risen $450 million to $2.3 billion in the 2008-09 financial year, as its operating losses more than doubled to $569 million.

It attributed its liabilities to the lodgement of common law claims and the the size of subsequent settlements. The figures spooked Queensland enough to contract Deloitte to review its operations, which identified these claims as a major ongoing risk.

WorkCover Queensland has projected that within six year its finances will need to support outstanding claims liability levels of $6 billion, driven by common law claims.

The difference for South Australia though was that its finances were seen as so bad that its chief Julia Davison this January announced her resignation.

The other, as far as the South Australia’s political climate goes, is that its average levy on employers is 3 per cent - more than double Queensland, Victoria and Comcare’s rate.

SA’s Redmond will use WorkCover’s financial woes to spearhead a thrift-conscious policy reform campaign as part of a plan to reduce the average levy rate from 3 per cent to below 2 per cent.

One of her key planks would be to boost self-insurer numbers - currently 40 per cent of all employers - by allowing franchise groups and industry associations to become self-insured, while it would introduce a new regulator to oversee WorkCover’s operations.

“This is a shockingly high number and requires broad community involvement if it is to be reduced”

WorkSafe chairwoman Elana Ruben on the state’s 14 workplace fatalities
OHS harmonisation?
Is it a pushmi — pullyu in the making?

As the nation moves towards the harmonisation of workplace health and safety laws across nine jurisdictions, the question remains: once implemented, will it stick and will it result in truly harmonised regulation of OHS across the country? Or will the interpretation and application of the laws by separate jurisdictions result in a Dr Dolittle style pushmi — pullyu.
When Julia Gillard spoke to members at the insurance giant Allianz’s Workers’ Compensation National Client Seminar in September last year she was under no illusion about the challenges that lie ahead.

“If it was easy, it would have been done by now,” she said, quoting Barack Obama who was facing his own battles to reform US healthcare.

The workplace health and safety laws will consist of the model Workplace Health and Safety Act, supported by model work health and safety Regulations and model Codes of Practice that can be readily adopted around Australia. This requires each state and territory to pass their own laws that mirror the model workplace health and safety laws and adopt them by December 2011. Harmonisation, as Gillard noted, has been on Labor’s agenda since 1974.

But with Western Australia’s decision to reserve “the right not to adopt [future] changes recommended” by the Workplace Relations Ministerial Council (WRMC), the road to harmonisation has already shown signs that unification and consistency in the future development and application of the model laws may be difficult to achieve.

Cracks that may widen as time passes were illustrated clearly on 11 December last year as Gillard welcomed state and territory agreement to the model OHS laws when Western Australian Minister for Commerce Troy Buswell released a separate statement that drew a line in the sand over several aspects, including the level of penalties and right of entry; power for health and safety representatives to stop work; and reverse onus of proof for discrimination issues.

“We also have concerns about changes to Category 1 and 2 offences in the model laws proposed by Safe Work Australia and adopted today by the WRMC,” he said.

Category 1 and 2 offences cover serious harm cases, with the categories distinguished by whether a breach was considered reckless or not. At the top end, corporations can face penalties of $3 million, while individuals can face a $600,000 fine and five years imprisonment.

Michael Tooma, partner at law firm Norton Rose, comments that while high level agreement was reached through the WRMC in December last year, risks to harmonisation’s sustainability have not been canvassed sufficiently.

While for example the Workplace Relations Act was effectively “stamped on the country”, the Workplace Model Health and Safety Act has required state government cooperation.

“If the proposed laws are implemented by state and territory governments, it will result in harmonisation,” Tooma told OHS Professional.

“The laws will hopefully have little difference, but those nine jurisdictions will still be enforced by nine different regulators, and nine different court systems,” he said. “Also, over time, as governments change, so may the emphasis change.”

Tooma pointed to South Australia and Tasmania’s upcoming election as
possible triggers for divergence from the agreement. On top of this, NSW, Queensland and the Federal Government are expected to go to election within the next two years.

“It’s expecting that a change of government will keep the commitment of its predecessor, which is a significant leap of faith. You’re relying on that, overtime, it won’t deviate from the script,” said Tooma.

OHS consultant from Simple OHS Solutions and lawyer, Sue Bottrell agreed with Tooma’s observations. While Western Australia’s response highlights the immediate difficulties the legislation faces, the real challenge will surface once each state’s regulator and court system has been brought into the picture.

“Consistent OHS legislation is just the tip of the iceberg,” Bottrell told OHS Professional.

“A company operating in several jurisdictions may face the same duties under [harmonised] legislation, but if the guidance by local regulators about how to interpret that duty and how to comply is different, then you’re almost back to square one.” “As Michael has said this can easily be influenced by changing contexts such as the political landscape.

“So, we’ve gotten over the first major hurdle, which is getting these states to give up their own legislation, but now we face the next major hurdle: consistent application within each jurisdiction, which has the right to operate independently. And that’s where push will come to shove.”

Even more variation may be expected as prosecutions are brought in each jurisdiction, and the courts begin to lay down case law under the legislation. Whilst we will likely see the various state and territory courts referring to decisions made in the different jurisdictions variations may start to appear as to how is legislation practically interpreted in each jurisdiction.”

Bottrell urged anyone who thinks that the harmonisation of state laws means the end of the process to think again.

“We are on the journey but we’re only at the beginning and if there isn’t real commitment to working together over the longer term the new model laws may end up a version of Dr Dolittle’s fabled pushmi — pullyu an animal pulling in opposite directions at once and unable to get anywhere.”
In the wake of the Cafe Vamp bullying case which was linked to waitress Brodie Panlock’s 2006 suicide, workplace bullying came in to focus. But what can be done to avoid it again?

Will tougher penalties reduce its likelihood or is bullying and its resolution so complex that it is impossible to prevent?

Concerned individuals such as Queensland-based anti-bullying campaigner Judy Wallace expressed outrage, prompting her to launch the “Justice for Brodie Panlock” Facebook group, which has attracted over 6,000 fans. Wallace is petitioning the government to review bullying, and introduce tougher penalties including criminal prosecutions for similar cases.

Regulators quickly issued stern reminders of employers’ and employees’ duties. SafeWork SA’s executive director Michele Patterson said employers had a “legal duty to ensure that so far as reasonably practicable, employees are safe from injury and risk to health while at work, which includes psychological harm from bullying.”

The message was buttressed by warnings that failing to do so could lead to fines of $300,000 for a first breach and $600,000 for repeats.

Despite the raised awareness of bullying, and figures on its hefty cost to productivity, several case studies conducted in 2006 by SafeWork Victoria’s highlight why it remains a problem for OHS professionals, employees and regulators.

Who does a victim go to as a first step? What is bullying? Was it direct or indirect? What happens once a complaint has been lodged? Have records been kept?

A case in point are the “informal” procedures recommended by WorkSafe WA, such as “check workplace policies and procedures”, seek advice, keep records, approach the bully, and lastly to use a counselling service.

But here’s what WorkSafe Victoria case studies found when it looked into the issue - findings which WorkSafe Victoria’s executive director Stan Krpan seemed all too aware of when, on the day of the ruling on Panlock’s case said: “By the time it has been raised with WorkSafe, often, the damage is done.”

**Definition**

“Inspectors talked about the difficulties of getting organisations to acknowledge the extent of the bullying problem, or even that they had a problem at all.”

**Large versus small workplaces**

“The impact [of an inspector’s visit] seemed less intense in smaller companies, or where the outcomes of the incident had had less impact. WorkSafe appeared to be least welcome in large organisation settings or where the incident had already been protracted and painful for the organisation.”

**Is it a serious matter?**

“Employees saw making a complaint to WorkSafe as a serious matter, and in two cases spoke of their hesitation to do this. The case studies indicate some lack of understanding of the WorkSafe role amongst employees.”

**Pain**

“The investigation process appears to be painful for all concerned – including victims, perpetrators and those involved in supporting the victim.”

**Racist guidance? (Bullying guidance Notice)**

Some managers see the BGN as ‘Anglo-Saxon’ in its definition of bullying and in the processes it recommended for managing the bullying risk. Some staff had a real fear of government as perpetrators of abuse from their experiences in their countries of origin.

**Regulator’s conundrum**

“The duality of the inspector role lies in their responsibilities to monitor breaches of the OHS Act with the potential outcomes of prosecution, as well as their role in assisting organisations control the risk of bullying. It is hard to juggle these two roles within one organisation.”
A “can do” attitude is usually what employers want, but in the case of Defence it’s also one of several cultural hurdles it needs to remodel to improve workplace safety.

At a recent Safety Institute of Australia conference, Lindsay Kranz, Director General of OHS and Compensation for the Department of Defence highlighted a paradoxical feature of its injury statistics: those that occur off the battlefield far outweigh those on it.

In the 2007-08 financial year some 12,849 OHS incidents were reported, which included 3 fatalities, 978 serious injuries and 147 people incapacitated for more than 30 days. And this doesn’t account for incidents that aren’t reported, which some estimates have put at 60 per cent.

While any death is regrettable, said Kranz, “when it was potentially or entirely preventable through the application of sound OHS practices, it is unconscionable.”

That was the case under Defence’s F11 Deseal/Reseal program, which became the subject of a major inquiry in 2001, and last year resurfaced via a separate parliamentary inquiry launched by the Department of Veteran Affairs.

“This incident resulted in the acceptance of over 400 claims for compensation on top of $22 million in ex-gratia payments to affected personnel,” said Kranz.

“There was also another $28 million in direct costs, including $6.5 million to run the Board of Inquiry. And this does not even start to examine the indirect costs or capability impacts.

Poor OHS performance in Defence can be exceedingly costly.”

The initial inquiry and subsequent investigations gave cause for the agency to question its handling of workplace risks, and the underlying factors that shape its implementation of safety procedures.

Unlike almost any other agency in Australia, Defence faces the challenge of implementing its policies across 100,000-plus workers, across multiple geographies and divisions. The problem for Defence under the F111 deseal/reseal program was that there was, according to Kranz, a culture of complacency over safety.

Evidence of this has resurfaced in the current inquiry. Photos submitted show workers painting F11 aircraft either partially or completely unprotected from chemicals that have since been linked with higher rates of cancer, amongst a raft of other health concerns.

“Prior to the revelations about the chemical exposure of maintenance workers repairing the F-111 aircraft fuel tanks Defence was in a state of blissful complacency about the OHS culture that existed within the organisation,” said Kranz.

The 2001 inquiry into the program revealed there were systemic failures in recognising and mitigating risks.

While none of the 56 recommendations explicitly mentioned...
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Lindsay Kranz, director general of OHS and compensation for the Department of Defence

culture. Kranz has picked up on it as a major factor which influenced decisions that turned out to have tragic implications for hundreds of its employees.

The 2001 inquiry noted that the Air Force supported a culture of “platforms over people”, and one that equated “masculinity” with “getting the job done”. Kranz said there was an apparent willingness by workers to ignore safety requirements.

But a question remained: why, when staff were adequately trained, did they persist exposing themselves to risk?

To answer this Defence’s OHS Program Office in 2004 commissioned its “Behavioural Baseline Research Project”, which looked at cultural factors that may have influenced staff attitudes towards OHS. The report found subtle, but widespread cultural factors that in many ways undermined investments it had made in implementing a safe workplace.

Key findings included that the “can do” attitude within Defence meant that, amongst peers, getting the job done took precedence over safety procedures when confronted with risk.

“Results show that despite relatively good levels of skill and training, personnel don’t follow OHS policy and procedure,” Kranz said of the report. “They know how to do a hazard identification assessment but still don’t do one before they start work.”

It also lacked any incentives for staff to mitigate risk or report safety issues, resulting in poor performance in respect of both measures.

In effect, Defence culture was undermining its efforts to implement a safe working environment.

“There was little reward and recognition for good OHS practice across nearly every Service and Group in Defence, and in some cases, no rectification of poor performance either,” said Kranz.

On the other hand, the project identified characteristics of Defence culture which could be leveraged for a new culture-conscious OHS strategy, which has also incorporated the ongoing development of a Defence-wide OHS management system.

Two key cultural strengths in Defence’s formalised hierarchy it found were that there was “relatively high trust” for most service chiefs or group heads, making them ideal candidates to take ownership of OHS risk management.

The same applied to unit leaders, however, it also found this area to be lacking in leadership in terms of linking Defence’s capability to OHS improvements.

Since then Defence’s OHS committee has sought out commanders at all levels to champion OHS change - a move that has revealed both successes and difficulties in steering the gigantic ship in a new direction.

“The Chief of the Defence Force and the Secretary for Defence followed this up with their own message to the entire organisation. This type of action is very important in the top-down command and control management of Defence,” he said.

The “can do” attitude has also been used to underpin Defence’s shift away from compliance-driven OHS to its new strategic focus.

“The strategic approach recognises the importance of OHS to Defence’s long term performance in delivering capability by protecting and retaining its people,” said Kranz.

Despite these realisations, massive challenges remain. While Defence’s chain of command culture is now being utilised to translate OHS goals into capability improvements that would be supported by its can-do culture, it still faces challenges common to operating any large organisation - a disconnect between senior and lower levels of the operation, as well as the problem of information silos.

“By some estimates under-reporting of incidents is at 60 per cent,” said Kranz. “Part of this may be due to the fact that most reports are seen to go into a ‘black hole’. That is, [despite reports being sent to Comcare] there is no visible response, analysis or action to prevent a similar incident.”

“We have to combat the ‘why bother’ attitude by going back to the source to clarify reports, regularly publishing compiled statistics and providing direct feedback about actions.”

Kranz also said that some employees believe OHS investigations and subsequent actions are “all about ‘arse-covering’”. “Defence has to demonstrate that investigations are about learning from mistakes and prevention of similar incidents,” he said.

“We already publish safety bulletins but they are few and far between and they do not always reference the incident or series of incidents that was the instigator.”

“Much is being done to influence the culture of ‘can-do’ towards ‘can-do safely’. “
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