



sharing solutions

Worker Participation in Health & Safety



*A review of Australian provisions for
worker health & safety representation*

A paper by
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HSE
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**The views expressed in this paper are those of the author and do not
necessarily reflect the views of the Health and Safety Executive**

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Please note that Appendices 1 – 8 have not been published as part of this report.
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PART 1: INTRODUCTION

Background

1. The aim of this project is to examine the contribution to Australian occupational health and safety (OHS) of the worker provisions designed to induce employer OHS compliance. The 'provisional improvement notice' or 'PIN' is one such worker tool and is the focus of this project.
2. The project stems from a Health and Safety Executive (HSE) International Branch initiative launched in 2000. It provided opportunities for HSE staff to review other countries' health and safety 'good practices', so that HSE could seek to develop alternative solutions in pursuit of its strategic objectives and continuing aims.
3. A key theme of the Health Safety Commission's Strategic Plan is to promote full participation in improving health and safety, including more effective *employee* participation. The Government has demonstrated its determination to bring about greater worker involvement through its 'Revitalising Health and Safety' commitments.
4. In 1999 the Health Safety Commission (HSC) issued Discussion Document DDE12, launching a public debate over proposals to improve worker involvement in health and safety; and to obtain stakeholder feedback regarding the most appropriate way to harmonise UK and EU-initiated legislation concerning worker representation.
5. HSC recognised that the changing patterns of work and declining trade union membership are amongst several influences which have had a significant impact on the effectiveness of the UK's existing health and safety workplace consultative arrangements.
6. Given this background and HSE's commitment to seeking new and innovative ways of improving health and safety, HSE was keen to review the Australian "PIN" and further its understanding of Australian worker statutory provisions. HSE's desire is to further the debate regarding the means of improving the effectiveness of worker involvement in the UK.

Project Scope

7. The PIN hails from the Australian state of Victoria. Its renown stems from the high profile that OHS activity in this state has attracted.

The Victorian OHS model has its foundations in the UK's 'Robens principle'. However, it has evolved the idea of 'self-regulation' into a system known in Australia as "**co-regulation**". It is within the framework of co-regulation that provisions such as the PIN have evolved.

Victoria is one of 10 Australian OHS jurisdictions. Each jurisdiction has developed its own OHS system with its own set of self-regulatory and co-regulatory tools.

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8. Motivated by HSE interest in researching innovative ways of improving worker participation and HSE policy developments founded in compiling the 'White Paper' for the 'Safety Bill', I expanded the project to examine the broader complement of worker sanctions.

This project therefore examines worker participation issues beyond the focus of PINs; and reviews the experience of other jurisdictions.

Report Summary

9. This report commences with a brief look at the evolution of worker involvement in health and safety; and the subsequent development of OHS consultation.

The Australian Federal and State OHS administrations are described and the OHS jurisdictional arrangements for workplace consultation introduced. Before going into the detail of the Victorian model, the principles underpinning effective negotiation and co-regulation are considered.

The Victorian model is then explained in theory, with a description of the legislative provisions. This is followed by a review of its application in practice. The review is based upon interviews with representatives of employers, trades unions and enforcing authorities, as well as academics with expertise in the field (listed at Annex 1).

The initiatives that some of the other OHS jurisdictions have taken are subsequently reviewed.

The report concludes with a personal commentary, comprising my observations and findings. The conclusions I make are intended to distinguish the potential advantages and disadvantages to the UK of the Australian worker consultation experience.

My interpretation is based on my insight as an HSE inspector, knowledge acquired during an Occupational Hygiene degree and my experience as an health and safety representative over the years since 1983 – not least, my current trade union position as an OHS rep on HSE's own "Corporate Health & Safety Committee".

However, it should be appreciated that this project arose from a 'short-term secondment': the interviews were conducted during a one-month visit to Australia. My comments and conclusions are therefore limited by the brevity of what was, in effect, a fact-finding mission.

Moreover, the opinions expressed are my own and do not necessarily represent the views of HSE.

Project Aims & Objectives

10. This project therefore aims to explore the full range of Australian provisions designed to:
 - (a) **proactively involve workers in protecting their health and safety;**
 - (b) **give OHS reps sanctions to overcome perceived OHS non-compliance;**
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- (c) **require managers to respond to OHS rep complaints; and**
- (d) **resolve any employer/employee OHS disputes.**

The information is intended to furnish HSE with sufficient insight competently to engage in the ongoing debate with stakeholders regarding legislative alternatives for improving the effectiveness of worker health and safety participation.

It is also intended to help inform future debate regarding the resource implications of adopting aspects of the co-regulatory model.

PART 2: HEALTH AND SAFETY PARTICIPATION

UK Health and Safety Developments

11. The active involvement of workers in occupational health and safety is not new.

The innovation that led to the manufacturing achievements of the Industrial Revolution was accompanied in the UK by a culture of management prerogative.

The latter played a part in the evolution of statutory interference, with the legislative effect being the imposition of specific duties on employers. Workers simultaneously developed existing guilds and friendly societies into organised 'trades unions'.
 12. Further evolution in worker involvement has varied with industry sectors: in the mining industry, legal provisions for *worker inspections* date back to 1872; whilst in other industries approaches have ranged from surreptitious deals over danger money to organised and long-fought struggles for collective bargaining rights.
 13. During the 1960s, industrial relations attracted serious political debate and proposals for reform. Workplace health and safety was included, as the impact of age-old factory legislation was widely regarded as holding back economic competition.
 14. The resultant 'Robens principle' of self-regulation has since been accepted as the basis on which to develop an OHS legislative framework not only in the UK, but also in Australia. This is helpful in drawing comparisons between the respective OHS systems as they share common foundations.
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The UK & Australia Today

15. The HSC's grasp of the Robens philosophy is manifested in Discussion Document DDE12:

"Consultation means both providing the workforce with information and also taking account of their views before making decisions affecting health and safety. The aim is to encourage active workforce involvement in developing measures to improve health and safety".

16. The phrases "consultation" and "active workforce involvement" are, however, subject to a range of interpretations largely dependent on ideological perspective. The disparity is highlighted when making a UK/Australian comparison of worker participative arrangements.
17. The Australian jurisdictions of Victoria, South Australia, the Australian Capital Territory (ACT) and the Commonwealth Government have evolved self-regulation into a more sophisticated system, referred to by Australian academics as "**co-regulation**".

The *consultation* provisions mirror the UK's; but legislation for *active worker involvement* is more empowering for Australian workers, providing them with greater opportunity to challenge management prerogative. Provisions to resolve conflict are legislated for, ie there are statutory rules governing employer/employee interaction *and* sanctions available in the event of 'foul play'.

The key sanction in the co-regulatory states is the OHS rep's notice. The state of New South Wales is exceptional in that its trades unions may also bring prosecutions.

PART 3: AUSTRALIAN OHS ADMINISTRATION

Australian OHS Framework

18. Australia is a federal nation. It is administered by the Commonwealth Government, whose current Prime Minister is the conservative leader, Mr John Howard.
19. Occupational health and safety legislation is almost entirely non-federal. Each of the Australian states and territories implement their own systems of administration and have developed independent OHS laws. The jurisdictions are:

Western Australia	South Australia
Victoria	New South Wales
Queensland	Tasmania
Australian Capital Territory	Northern Territory
Commonwealth (liken to 'the Crown')	Seafarers

Australian OHS Jurisdictions

Federal Government Administration

20. Under Australia's constitution, the Commonwealth government has never sought to intervene in occupational health and safety regulation or standard-setting. The matter has always been left to the states.
21. However, in 1984 the Bob Hawke Labour government established a National Occupational Health and Safety Commission (NOHSC) to act as a national forum for Australian OHS matters, to undertake research and to develop non-mandatory national standards.

NOHSC has since been the subject of considerable reorganisation and downsizing, resulting in a significant loss of staff and expertise. NOHSC's survival has been open to question.

Nevertheless, NOHSC remains on the OHS landscape and is successful in facilitating federal-state coordination through joint federal and state government representation as well as including in its membership the Australian Council of Trade Unions (ACTU) and the Confederation of Australian Industry (CAI).

To this extent, NOHSC may be likened to our Health and Safety Commission.

22. In 1997, the Australian government withdrew funding grants for OHS research. A recent analysis of grants conducted by the Australian Research Council found that "the state OHS authorities are now the major sponsors of OHS research, but their capacity to support high-quality and long-term substantive studies is questionable, given funding tensions".
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23. The Australian government introduced the Workplace Relations Act, removing occupational health and safety provisions from the "allowable matters" in industrial awards. Promoted as simplifying awards, the Act encourages the establishment of individual workplace agreements.

State OHS Administration

24. A radical review of the state of OHS legislation in Australia followed that in the UK under Lord Robens and the Australian adoption of the International Labour Organisation's Convention 155 (see below).
25. Australian jurisdictions have developed their own independent primary health and safety legislation and this is largely based on the Robens philosophy. Moves to adopt Robens commenced soon after the release of his committee's report. However, it was several years before new OHS law came into force.

New South Wales introduced legislation in the early 1980s. Victoria's Occupational Health & Safety Act 1985 was passed, introducing a system based upon *co-regulatory* concepts. Seminal to the system was the introduction of the provisional improvement notice.

26. The Victorian system contrasted starkly with that implemented by New South Wales. The NSW OHS Act 1983 provided for employee consultation solely through workplace OHS committees and was at odds with ACTU and Labour Party policy.

Despite a major enquiry in NSW into workplace safety during the late 1990s and the introduction in the year 2000 of a new OHS Act, there has been little material change in NSW in the extent of worker participation. An increased duty on employers to consult has been accompanied by vast tomes of guidance by the enforcing authority (WorkCover NSW). The guidance is extensive, well-written and professionally very supportive; but its impact may be undermined by the fact that the new, strengthened duty to consult is far from being a *tough* duty.

27. Nevertheless, in South Australia, the ACT and the Commonwealth, the Victorian model was adapted and OHS rep notices introduced.
28. A key OHS influence in Australian OHS is worker compensation. Worker compensation and claims for sickness benefit are administered by the state compensation scheme.

Within some Australian OHS jurisdictions, the OHS regulatory agency is combined as one authority with the compensation administrator. Whilst the regulatory function benefits from the accident and ill health data, it can be subjected to economic pressure which undermines its ability to remain impartial. The OHS compensation system is a powerful economic driver and attracts a great deal of political interest. Indeed it is regarded as a "political football".

ILO Convention 155 concerning Occupational Safety and Health and the Working Environment 1981 and its Recommendation No 164 advocated international standards for employee involvement in health and safety at work. Notably, workers' safety delegates, workers' safety and health committees and joint safety and health committees should be able to:

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- (a) contribute to the decision-making process at the level of the undertaking regarding matters of safety and health; and
 - (b) be able to contribute to negotiations in the undertaking on occupational safety and health matters.
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State Arrangements for Worker OHS Involvement

29. All jurisdictions afford employee consultation rights. Typically these include the right to OHS information and the right to inspect the workplace. These are similar entitlements to those found in the UK 'Safety Representatives and Safety Committees Regulations 1977'.

Common to the Australian states is the requirement to establish a health and safety committee, comprising management and employee representatives.

In most jurisdictions, health and safety representatives may be elected. The election process and trade union involvement varies. So too do the sanctions available to a rep in the event of perceived management OHS breaches.

A table at Appendix 1 summarises the provisions.



PART 4: PROMOTING EFFECTIVE WORKER PARTICIPATION

Key Concepts

- 30. Effective workplace consultation is generally achieved through a system of health and safety representation and committees, designed to promote OHS issue resolution. Its success relies upon the effectiveness of the negotiations which take place:

Dictionary definition: 'Negotiation – bargaining to reach agreement'.

According to relevant contemporary text books, successful negotiation requires participants to be competent and the climate to be right for their effective participation. Provisions for issue resolution cater for potential dissent.

The main features of negotiation in practical terms are:

- Competence
Knowledge and/or experience of the subject matter;
Ability to articulate the issues;
Being up-to-date with relevant developments; and
Firm, polite assertion.
- Climate
A willingness to participate;
Clear and agreed procedures – setting the 'rules of engagement';
Mutual respect; and
The provision and availability of suitable time and resources.

- 31. Training is vital for participants to engage in the process. Both training in OHS itself: for instance, hazard identification, risk assessment, legal duties; and training in negotiation skills, so that participants may understand the principles underpinning successful negotiation and issue resolution.
- 32. Issue resolution may require independent, third party intervention. This can take the form of adjudication and/or arbitration.

Co-regulation

- 33. 'Co-regulation' refers to a shared involvement in risk control decision-making between employers and employees with the aim of ensuring worker's health and safety.

Both employers and employees are provided with a statutory framework for negotiation and issue resolution, so they are not free to regulate as they wish. However, unlike self-



regulation, provisions are designed to afford *power-sharing*. Both parties are given sanctions and entitlements and both may call in the enforcing authority to adjudicate. As a last resort, arbitration at some form of industrial tribunal is available.

Typically, employees are entitled to elect health and safety reps, who in turn have rights to bring to the employers attention matters of OHS concern; and rights to *force* matters to the attention of the deficient employer. The employer then has a choice: either to comply with the OHS rep notice or to request the enforcing authority's adjudication.

34. Involving the enforcing authority naturally has its own uncertainty. Nevertheless, the choice provides the employer with the opportunity to resolve the matter internally and discreetly - an option attractive to many businesses, particularly those that are hostile to state interference or fearful of criminal culpability.

PART 5: THE VICTORIAN MODEL

Introduction

35. When the Occupational Health and Safety Act (OHS Act) 1985 was introduced, it was accompanied by guidance which set out in clear terms the philosophy for workplace consultation and issue resolution:

"The OHS Act provides a framework for the prevention of occupational injury and disease. A key objective of the Act is the involvement of employees and employers and their associations in improving health safety standards.

Through the operation of such consultative arrangements, the Act seeks to reduce disputes relating to occupational health and safety through cooperation between employer and employee representatives to actively address health safety issues as they arise.

A 'health and safety issue' does not necessarily imply the existence of a health and safety dispute.

The Act includes mechanisms for the parties in workplaces to deal with health and safety issues that previously may have led to disputes. The mechanisms are:

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- negotiation between employer and employee representatives for the effective resolution of issues;
- issue of a Provisional Improvement Notice by a health and safety representative;
- cease-work provisions where there is an immediate threat to the health and safety of any person.

The Act encourages employers and employees to resolve health safety issues in a spirit of cooperation."

36. The Act has since been the subject of 5 amendments, largely during the 1990s.

The main effects of the amendments have been to (a) increase the amount of consultation that is required and (b) remove the *trade union* from the statutory worker consultation requirements.

Consultative Structures

37. The existing, amended OHS Act provides for 2 workplace consultative structures:

- (a) elected health and safety representatives, who act on behalf of a group of employees called the Designated Work Group (DWG) and who deal with day-to-day issues with a management-nominated representative;
- (b) the Health & Safety Committee, membership of which comprises at least 50% employee representatives and which deals with the overall policy, planning and monitoring of OHS. Whilst it is not stated in the Act that the OHS reps sit on the committee, this is expected.

38. In its original 1985 version, a third, tripartite means of worker representation was available, taking place beyond the boundaries of the workplace. Similar to the tripartite UK Health & Safety Commission, an OHS Commission was established consisting of state employer and labour associations together with appointed independent experts.

Supporting Procedures

39. The procedures in place to establish the structures are as follows:

- 1st. the designated work groups are determined;
- 2nd. elections of the health and safety reps are held;
- 3rd. the health and safety committee is established.

Designated Working Group

40. Section 29 specifies the provisions for designated work groups.

The DWG is essentially the area of coverage, or constituency, for the prospective OHS rep. The principal underlying Section 29 is that the OHS rep will be accessible to the workforce and familiar with the workplace risks.

The wording of section 29 is intended to provide the flexibility necessary to cater for the full range of workplaces and allow negotiating parties to determine a framework appropriate to their specific work situation.

41. Determining DWGs is triggered by either an employee request or a management initiative.

When it is a worker initiative, the employer must do everything 'reasonably possible' to ensure the DWG negotiations start within 14 days of the request.

There is no set timescale for concluding the negotiations. However, if agreement cannot be reached, either party may apply to the regulator to determine the groups.

Elections

42. The next step in worker representation is for DWGs to elect their respective health and safety representative.

43. Under the original Act, trade union-organised workplaces required trade union-organised elections. Non-unionised workforces could request the attendance of an inspector to conduct the election.

44. Nowadays, members of the DWG have the choice of conducting their own elections or involving the union(s).

If agreement on process cannot be reached, a DWG member can ask for regulator assistance. The regulator (WorkSafe Victoria) *may* appoint someone.

It is up to the workforce to decide what they want. They are entitled to health and safety representation; however they are equally entitled to opt out.

The Act provides a process for employers to follow where an OHS rep requests the establishment of a health and safety committee. The employer has three months from the date of request to comply, during which time, consultation with the rep as to the composition and functions of the committee must take place.

Once established, the OHS Committee is comparable to its UK counterpart; except that certain minimum requirements are stipulated, notably the frequency of meetings (at least quarterly).

The Health and Safety Representative: Role and Rights

45. The function of an OHS rep is very similar to that of a UK health and safety rep.

The provisions are contained in Section 31 of the OHS Act and limit OHS reps to acting within their DWG constituency.

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They are entitled to require the establishment of a health and safety committee; and take part in any visits or interviews that an inspector may undertake. The reps must, however, *consult their employer first*, in accordance with the amendments made to the Act.

The requirement for prior employer consultation does not extend to the OHS rep's right to seek external assistance and invite to the workplace the person providing this assistance.

OHS reps are vested with enforcement powers comparable to an HSE inspector's authority to prohibit work or instigate health and safety improvement.

Cease works

46. Section 26 of the OHS Act details the provisions available for dealing with health and safety issues, particularly those posing an immediate threat.

Workplaces are required to have in place a "relevant agreed procedure" for issue resolution or, if there is no such procedure, a "relevant prescribed procedure".

The way in which this requirement is met depends on the workplace.

For instance, in construction an industrial agreement is established which sets out the industrial relations framework agreed between the industry and trades unions and the mechanisms for negotiations. A copy of the Victorian Building Industry Agreement is appended to this report (Appendix 2).

Some workplaces have an "EBA" or Enterprise Bargaining Agreement. Workplaces without such an agreement must refer to the Occupational Health and Safety (Issue Resolution) Regulations.

47. Notwithstanding these procedures, there may be occasions where risk is serious and imminent, and engaging in extensive procedures would be dangerously time-consuming.

Prompt consultation between the employer (or employer representative) and OHS representative must take place.

Agreement is manifested by an immediate resolution or a joint direction to cease work. If there is conflict (ie a 'stoppage dispute') either party has the right to direct a cease-work. Moreover, either party is entitled to contact WorkSafe and summons adjudication.

48. WorkSafe Victoria (WorkCover's inspectorate) is committed to a 'stoppage dispute' response time of 45 minutes for the metropolitan area and a 2 hour performance-target for rural Victoria.

Where the inspector agrees that there was an immediate health and safety risk, justifying the stoppage instruction, or that the OHS rep reasonably believed such a threat existed, employees employed in the work are entitled to be paid for the duration of the stoppage.

Typically, however, they will have been undertaking payable work in any case, because the OHS rep and workforce usually agree to working elsewhere - in an alternative area or on alternative plant deemed as being safe. So the approach is pragmatic and allows the job to progress at the same time as the acknowledged danger is brought under control.

Provisional Improvement Notices (PINs)

49. Section 33 of the OHS Act states that where an OHS rep is of the opinion that any person –

- (a) is contravening health and safety law; or
- (b) has contravened it in circumstances that make it likely that the contravention will continue or be repeated –

the rep may issue a PIN requiring remedial action to be taken.

The PIN *must* include the rep's opinion of the alleged breach, the reasons for the opinion, identify the relevant legislation and the date for compliance (which must be at least seven days hence).

The notice *may* include directions for how the employer can correct the situation (like an HSE schedule to an inspector improvement notice).

50. Section 33 received insertion 33(1A) in 1993, requiring the OHS rep to consult with the person to whom a PIN is to be issued *prior* to its service.

Contemporary WorkSafe guidance describes this requirement as providing employers with the opportunity to correct problems so as to avoid being subjected to a PIN.

“Consultation is a very important aspect of the Act and this change helps to ensure consultation takes place”.

Issue Resolution

In the aftermath of a ComCare investigation into an alleged breach of OHS law, ComCare has 6 months to institute legal proceedings. If these are not initiated within the timescale, the rep or trade union may write to request that ComCare proceeds. Within three months after receiving the request, ComCare must disclose the state-of-play and explain any decision *not* to proceed.

57. Within the New South Wales jurisdiction, a remarkable statutory provision exists: trades unions have the right to bring a prosecution.

Summary

58. These features further support and strengthen the co-regulatory framework.

Summary of Australian Co-Regulatory Provisions

- Right to issue a notice.**
- Right to stop the job.**
- Right to challenge Regulator adjudication.**
- Right to request Regulator enforcement.**
- Right to prosecute.**

PART 7: THE VICTORIAN MODEL IN PRACTICE

7.1 Empirical Evidence

59. **There is no empirical evidence regarding the effectiveness of OHS rep enforcement.**

Work stoppages and PINs require no notification to any authority. As such, no statistical information has ever been collated in Victoria to demonstrate the OHS impact of worker sanctions.

critique examines these alleged barriers to success reported by trade union *and* WorkSafe officials.

69. The critique in section 7.3 is followed in section 7.4 by a look at the issue resolution concerns raised by UK industry: that PINs would be divisive and overburden HSE.

7.3 Barriers to Effective Workplace Consultation

70. Based upon the interviews I conducted, the key constraints upon effective workplace consultation are seen to be:

- **The political climate**
- **Performance of the Regulator**
- **Legislative weaknesses**
- **Lack of competence and/or commitment**

- **Political Climate**

71. The political climate is considered to have a profound effect. It influences the legislature and nature of statutory interference; and it determines the industrial power bases: the extent of trade union or employer support. At state level, it also impacts on the regulator.

Impact on Regulator

72. Australian state politics appears small-scale compared to the UK and other European Union member states. I gained the impression that in Victoria, the enforcing authority is far more susceptible to political interference than is HSE.

HSE appears to be more organisationally robust when compared to its Victoria state counterpart. The regulator there has been subjected to substantial, unsettling change, beyond the typical public sector reorganisation with which we in HSE are familiar.

73. Victoria's OHS Act of 1985 established an OHS Commission, a tripartite body responsible for such matters as recommending standards. Enforcement was achieved by the inspectorate, a public service department known as WorkSafe.

Legislation in 1992 abolished the Commission, transferring its functions to the public service department which contained the inspectorate. Four years later this was merged with WorkCover Victoria, the statutory authority which administers the state accident compensation scheme.

WorkSafe was effectively subsumed by WorkCover and the two organisations have since endured a difficult relationship with substantial reorganisation. The tension arises out of their ideological differences – WorkSafe's proactive role in regulation and WorkCover's reactive role in providing compensation.

The significance of amalgamating the OHS and compensation administrations is considerable: the integrated WorkCover authority is susceptible to attack, mainly because of the political dynamics over worker compensation, and the short-sighted perception of financial gain exceeding OHS gain.

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74. The manifestations of WorkSafe Victoria's vulnerability that I perceived affected (i) their enforcement policy and (ii) staff morale.

75. **(i) Enforcement Policy Pendulum**

The Inspectorate traditionally came from a skilled labour background: experienced, practical people familiar with the working world. Their enforcement style was apparently firm but fair; they did not shy away from enforcement action.

During the early '90s, the political climate in state of Victoria was sympathetic to deregulation. The political climate changed such that the transition of the inspectorate from a public service department to a statutory authority during WorkSafe's merge into the Victorian WorkCover Authority was accompanied by what was perceived by some to be a brutal "spill and fill" exercise undertaken by the management of VWA.

A new Inspectorate was created with the specific intention of providing industry with health and safety *advice*. Graduates were recruited on the understanding that they would act as consultants. The enforcement policy shifted dramatically from one of enforcement as we know it in HSE, to one of advice and little else – questionably a policy of 'total tolerance'.

76. The return in 1999 of a Labour state government in Victoria has seen some change to redress the balance.

WorkSafe's enforcement policy is now comparable to HSE's. However, a tripartite body as once existed has not been reinstated. And WorkSafe staff face a considerable credibility challenge. Their fluctuating enforcement history has seriously damaged stakeholder confidence.

77. Trade union officials and industry association representatives alike stated their lack of trust in the regulator.

One trade union official claims to have so little confidence in WorkSafe's commitment to OHS reps that they compare asking WorkSafe for help to asking the police for assistance after a rape (their analogy being based on their perception that the rape *victim* is treated as the *offender*). Whilst this may be an emotive point of view, the positive dissuasion of reps seeking WorkSafe assistance cannot be overlooked when reviewing the regulator/stakeholder relationships.

And during a meeting with SME industry associations, their representatives rhetorically posed the question as to how WorkSafe could expect their members to take up an 'outreach' offer for a free, three-hour long inspector consultation when they perceive ambiguity as to whether the outcome would be an 'OHS makeover' or a prosecution.

78. **(ii) WorkSafe Staff Employment Status**

The history of reorganisation has been such as to undermine employee job security. The effect in terms of staff morale is perceptible.

- **Performance of the Regulator**

79. The unions and some employer representatives criticise WorkSafe on the following grounds:

- (i) poor adjudication of PIN disputes;
- (ii) inconsistent inspector practices;
- (iii) inadequate enforcement;
- (iv) inappropriate perception of the role of the OHS rep; and
- (v) distinctions made between OHS and industrial relations issues.

80. (i) Regulator PIN Adjudication

The trade union experience of WorkSafe Victoria adjudication is apparently a poor one. The unions allege that WorkSafe inspectors fail to take account of the *circumstances giving rise* to the issuing of a PIN; the conditions that have forced the OHS rep to use enforcement in preference to negotiation. As such there is concern that inspectors fail to appreciate the *intent* of the OHS rep's actions concentrating more on the procedural propriety.

This, the unions allege, has given rise to unreasonable cancellation of PINs by inspectors. Notably for "technical errors", which are described as being such things as: the wrong regulation being quoted, data lacking legal precision, unrealistic deadlines being set. In short, matters which an inspector *could* readily modify to uphold the notice's intent.

A modified, upheld notice demonstrates agreement that non-compliance exists and gives WorkSafe ownership of enforcement of the remedy. Cancelling a notice without investigating the circumstances that prompted its service has allowed the situation to arise where the inspector withdraws from the workplace dispute, leaves the workplace OHS management unaltered and the OHS rep and workforce without recourse to remedial action.

It is reported that OHS reps whose notices have been quashed in such circumstances have been left undermined, humiliated and vulnerable to employer retribution. And less likely to make use of the PIN provision again.

WorkSafe Victoria is aware of stakeholder concern about its PIN adjudication and is keen to address this issue. A series of operational instructions (Appendix 4) has been devised to reinforce to inspectors the sanctions they have at their disposal and how each should be used.

81. (ii) Regulator Inconsistency

Inspectors are also criticised for inconsistencies in approach. I suspect that the deliberate changes in recruitment strategy has exacerbated this.

However, as an inspector, I also suspect that it is symptomatic of a profession in which a broad understanding of industries and their practices is required and extensive powers of both enforcement and discretion are authorised. In other words, *it's the nature of the beast* and something the enforcing authority needs to manage through training and operational instruction.

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The above-mentioned operational instructions also aim to promote consistency. A training initiative was established in tandem with their issue, because WorkSafe Victoria was equally aware of this concern and endeavouring to respond.

82. (iii) Regulator Enforcement

The trade unions in Victoria allege that WorkSafe enforcement is weak.

They attribute this to the recent (1990s) radical-right era, which was marked by a state government move towards deregulation which heavily influenced its state agencies. During this time, there was a far greater emphasis on inspectors providing guidance and advice than on enforcement.

The unions claim that a laissez-faire attitude towards enforcement continues to this day and that inspectors go for the easy option. Their expectation that WorkSafe would serve a prohibition notice shutting down a building site or stopping work at a factory is low.

This perception is somewhat at odds with the present enforcement policy statement of WorkSafe Victoria and may say more about the union's past enforcement experience than can justifiably reflect the current direction of WorkSafe's compliance efforts. It may also be symptomatic of the absence of the high level tripartitism which the original OHS Commission catered for, whereby shared dialogue allowed a common understanding of stakeholder issues and constraints.

WorkSafe was seeking to improve this very matter during my project visit, by establishing a joint working group combining industry, trade union and their own representatives – in this case to look at ways of improving compliance regarding worker consultation. This follows recent WorkSafe funding for a fresh look at the state's OHS rep strategy.

83. Notwithstanding this, the trade union position with regard to WorkSafe's efforts to demonstrate a commitment to effective worker consultation is uncompromising: they challenge WorkSafe to enforce the statutory provisions that are intended to protect workers and their reps. My understanding of the union perspective is that, rather than trying to develop a new initiative, WorkSafe should objectively enforce worker consultation issues because they have yet, successfully, to do so.

84. (iv) Perception of the Role of the OHS Rep

There are differences of opinion between the OHS stakeholders and individuals, WorkSafe staff included, on the role and responsibility of an OHS rep.

The widely-held trade union view is that OHS reps serve solely to protect workers' OHS interests and are accountable to the DWG alone. This view is shared by some WorkSafe officials, but there are others who regard OHS reps as WorkSafe helpers - likening them to volunteer fire-fighters. Their expectations of OHS rep conduct and trade union relationships with other OHS stakeholders reflects this. This includes the expectation that partnerships can readily be forged.

85. (v) OHS and Industrial Relations Issues

There are also differences of opinion regarding what constitutes a health and safety matter as distinct from an industrial relations issue. Just as is the case in the UK, this is a source of considerable argument reflecting ideological polarity.

The arguments are re-examined in Part 8.

- **Legislation**

86. The Victorian OHS Act has been subject to several amendments, largely during an era politically sympathetic to the views of employers and their representatives. It is the trade unions' view that the amendments were introduced deliberately to appease employers and to hinder OHS rep effectiveness.

The following paragraphs therefore reflect trade union and WorkSafe views and not those of employers, whose views were not sought.

87. The Victorian OHS Act as amended is considered by the unions to be deficient in several ways:

- (i) Increased requirements upon OHS reps to consult;
- (ii) Inequities in statutory provisions;
- (iii) Opportunities for employer interference.

(i) Increased Consultation

The requirements upon OHS reps to 'consult' are considered by the unions to be excessive and burdensome. Recalcitrant employers are provided with greater opportunity not only to frustrate OHS negotiation, but also to allege opposition foul play. There is concern that a "consultative paralysis" is hampering successful OHS issue resolution. However, there is no data or firm evidence to support this perception.

(ii) Inequities

OHS reps who are unhappy with the acts or omissions of an inspector may complain to WorkSafe and trigger an internal, WorkSafe assessment of the inspector's intervention.

However, Victorian reps and unions who disagree with Regulator adjudication have no statutory remedy. This has given rise to a strong sense of inequity in the OHS consultation system amongst the Victorian trade union movement. In other co-regulatory states, a right of review exists. This grants OHS reps the same rights as employers to appeal against inspector decisions.

Some representatives of WorkSafe individually expressed that they would support the introduction of this right in Victoria. Indeed, it was commented that establishing an OHS rep ombudsman could be a worthwhile initiative (although it should be noted that this was an off-the-cuff suggestion, not an approved or existing proposal).

This is in part due to a shared perception that there is bias in the current system of arbitration: in particular, that the Industrial Division of the Magistrates' Court is heavily employer-based. I was unable to establish whether this view could be substantiated or whether it was based on a radical premise.

(iii) Employer Interference

The Act originally provided for trade unions to conduct OHS rep elections. Since 1993 it has been for members of every DWG to organise an election, ie a group of workers with no formal structure or procedures for organisation.

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WorkSafe advise that the number of OHS reps has dropped noticeably. They cannot explain this but it was suggested that the removal of the trade union from the election process has undermined health and safety representation. This view contrasted with another that the legislative changes have made no difference and that section 29 (establishment of any DWG) is readily available for trade unions to utilise should they wish to "win their support on the ground".

The unions claim that it is common for employers to interfere with the election process. A representative of WorkSafe explained that employer interference depended upon the trigger for the election: if the election is worker-driven, interference is unlikely. However, if the election stems from an employer initiative and ruling, interference may occur.

88. Representatives of WorkSafe also expressed concern about the impact of politically-motivated statutory interference.

The deregulation of trade union involvement in OHS rep elections has, according to one representative of WorkSafe, "cut adrift" the health and safety reps from Regulator protection. The former Regulator-Trade Union interface has allegedly been compromised, distancing OHS reps from WorkSafe and leaving them with less support and greater susceptibility.

WorkSafe Victoria would like to adopt the South Australian statutory provision which requires elected OHS reps to notify the South Australian WorkCover Corporation of their appointment. Victorian unions say they would oppose such a move because of concerns about WorkSafe's perception of OHS rep ownership and because they lack trust. It was reported to me that an OHS rep was blacklisted following an alleged WorkSafe indiscretion.

89. Health and safety rep vulnerability is perceived by both the trade unions and WorkSafe as being a serious matter for concern. Harassment and blacklisting of reps is well-known and blacklisting is particularly rife in rural areas.

WorkSafe Victoria has never taken a prosecution for discrimination against an employee or an OHS rep. This is a bone of contention amongst the unions. I raised their complaint with WorkSafe and learnt that (a) the capacity to prosecute is undermined by the wording of the legislation and (b) some discrimination sufferers are "their own worst enemy" in that the information they provide for a compensation claim often contradicts their harassment allegation.

It should be noted however that WorkSafe is currently in the process of investigating an OHS rep's allegation of victimisation (which, it is alleged, followed the service of PINs) and evidence for possible legal proceedings is being collected.

- **Competence & Commitment**

90. A lack of competence, be it knowledge and experience of occupational health and safety itself, or skill and ability to negotiate, is seen by all parties as being a highly significant barrier to effective OHS.

91. Training is considered to be the key to success.

92. My observations and findings indicate that for employers, training is not enough: a commitment to securing OHS compliance is necessary for OHS competence to be seen as a worthwhile business attribute.
93. Regulator competence is also a feature, including the training needs of inspectors.

Training

94. Victoria's OHS Act entitles OHS reps to take "such time off with pay as is necessary..... for the purpose of performing their functions or duties" or undergoing WorkCover-approved OHS training.
95. However, the Act is silent on funding; and, like the UK's Safety Representatives & Safety Committee Regulations (SRSC), the time considered "necessary" for TU work is open to interpretation, thereby providing an opportunity for conflict.
96. Political influence typically plays a part. Government grants available when the Act was first launched have been axed. Trade union resources have been hit by a decline in membership; and stretched by competing demands. The situation has been aggravated by deregulation of the national pay award, propelling the unions into more and more wage & condition disputes.
97. Training is a big concern for trade unions and OHS reps, especially non-TU reps who lack trade union funding and support.

The 2001 ACTU survey estimates that only 25% of OHS reps are trained.

98. Training is also a current concern of WorkCover's.

During my stay in Melbourne, WorkSafe released an 'Issues Paper' entitled "Health and Safety Representatives: supporting consultative arrangements in the workplace" (Appendix 5).

With regard to OHS rep training the paper states "concerns have been expressed about OHS reps knowledge of their role, duties and functions and confidence in fulfilling their role".

With regard to PINs, WorkSafe expressed concern about OHS rep understanding of timescales for improvement. WorkSafe Victoria inspectors have cancelled PINs on the basis of an unrealistic timescale being set. They suspect that the training reps receive is too focused on legislation (rights of reps etc) and not enough on the practicalities.

The Authority has been awarded funding to develop initiatives designed to strengthen workplace consultative arrangements.

99. OHS reps are not alone in being considered to be disadvantaged. Small and medium-sized enterprises (SMEs) are also regarded as being vulnerable. WorkSafe and Industry Association initiatives are underway to tackle this.

WorkSafe Training Initiatives

Case Study 1 - Commitment In Construction!

In Victoria, enterprise bargaining arrangements have developed into a state agreement.

The current "Victorian Building Industry Agreement (VBIA)" covers the years 2000 to 2005 and addresses the huge range of employment terms and conditions. It also commits all parties to high OHS standards, and provides dispute settlement procedures including a Disputes Board to settle deadlocks.

Notwithstanding widespread concern at the industry's fatality rate and alleged corruption, I was impressed with the arrangements for OHS consultation at the 2 sites I visited. To put these in context, both were under the management of internationally-renowned Principal Contractors who have reputations at stake. Nevertheless, if it sets OHS standards for the Australian construction industry, it is encouraging.

The OHS reps are engaged to undertake full-time OHS activity: they are welcomed as part of the monitoring arrangements and seen as having the capacity to bridge the management-worker gap. They are therefore encouraged to attend trade union OHS education and undergo training in such fields as communication skills and negotiation techniques.

Consultation takes place at different levels and there appears to be genuine interest in worker opinion so that workable construction processes are planned for.

'CDM'-type projects typically have a project safety committee comprising the Principal Contractor's contract manager, the main subcontractor's supervisor or foreman, and worker OHS reps from all of the subcontractors.

It is not unusual for the committee to be chaired by one of the OHS reps, with a manager acting as vice chair!

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There is also daily consultation through regular planning and progress meetings.

Issues have arisen and the VBIA provides procedures for dealing with disputes. Typically, OHS issues give rise to cease-works, reflecting the high risk nature of the industry. PINs are very rare.

The OHS reps I met were provided with trade union site offices and worker training facilities. Their involvement in the vetting of subcontractor risk assessments and method statements was formidable, demonstrating an ability to grasp the key issues as well as competence.

As I was shown around the trade union site facilities, I was intrigued to be informed of "Incolink". This is a joint enterprise of employer construction associations and construction unions, which publishes annual safety handbooks for workers and provides industrial chaplains, councillors and financial advisors to support construction workers with any social, domestic or financial problems. I took this as a genuine demonstration by the industry to consider work-life balance constraints.

7.4 Issue Resolution – Impact on Regulator

108. The Confederation of British Industry (CBI) has voiced its concern that PINs in the UK would be divisive and a bureaucratic burden on HSE:

“[PINs] would encourage misuse of health and safety concerns as a means of applying pressure on employers in relation to other industrial relations issues”.

109. Australian trade union officials, academics in the field of industrial relations and enforcing authority officials were unanimous in reporting that the expectation of Australian industry, prior to the introduction of PINs, was that PINs would bring industry to a standstill and burden the regulator. This was evidently not the case.

110. Indeed, it was my understanding that consideration and caution are genuine features of PIN use; and I found some encouraging examples co-regulation in general. This included a case which demonstrated the *advantage* of co-regulation to the regulator. Far from the events being burdensome to WorkSafe, they provided WorkSafe with an opportunity successfully to regulate in a manner exclusive to a co-regulatory system. Case Study 2 describes the situation.

Case Study 2 – Issue Resolution Enforced

The Victorian Rural Ambulance Service introduced a new fleet of 280 ambulances purchased from the United States. They omitted to include health and safety considerations in their selection criteria and therefore overlooked a critical design difference.

The floor level of the new vehicles was higher than that of the previously used model and consequently incompatible with the existing trolley-stretcher system. Ambulance crews were therefore required to undertake hazardous manual handling in order to lift the stretcher (plus patient) to a point at which it could engage the manual handling aid.

That the oversight posed a risk to health and safety was indisputable. However, trade union attempts to seek improvement were unsuccessful. Eventually, an OHS rep issued a PIN.

WorkSafe became involved and the inspectors quickly grasped that poor industrial relations existed within the ambulance service. They were quick also to appreciate the potential for onerous demands for their adjudication services – and the potential for a burden on their resources.

The inspector affirmed the PIN, thus taking ownership of the notice, but extended its expiry date. The Ambulance Service had to retrofit their entire fleet. At the same time, the inspector served a second improvement notice which required compliance with the OHS (Issue Resolution) Regulations. The Ambulance Service was forced to include procedures for issue resolution within the Enterprise Bargaining Agreement.

Further requests for WorkSafe intervention from the Rural Ambulance Service are declined by WorkSafe when there is evidence that the issue resolution procedures have not been applied.

111. The action was taken by inspectors at one of Victoria state's rural offices, in Ballarat, where the inspectorate has facilitated a network of OHS reps to promote mutual support and a link to WorkSafe if necessary.
 112. WorkSafe's construction team comprises 35 inspectors who undertake about 800 visits per month. It is thought that there are about 20 work cessations per month. Given that these are the stoppages known to WorkCover, the figure represents 'stoppage disputes' alone - since undisputed work cessations do not give rise to WorkSafe intervention.
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There is a reasonable amount of construction underway in Melbourne (as it attempts to compete with the 'rebuilt' Olympic city of Sydney) with some huge and controversial metropolitan sites.

- 113. During Victoria's health and safety week, when OHS attracted a particularly high profile, WorkSafe staff were alerted to 98 PINs. All but 9 were affirmed – and those 9 were cancelled for failures to consult.
- 114. The attitude common to WorkSafe Victoria staff that OHS reps are the inspectors aid tends to counter the suggestion that OHS reps are burdening the regulator.



PART 8: PERSONAL COMMENTARY

UK Self-Regulatory Philosophy

115. The assumptions upon which the Robens philosophy was developed have long been challenged as unitarist in outlook. They assume employer and worker share the same interests.
116. In the UK, employers are required to *consult* their workforce. This is generally interpreted as requiring employers to provide the workforce with OHS information and to take account of worker views before deciding the risk control measures to implement.

It is *hoped* that by taking account of worker views, the employer's decision-making may be influenced. HSC/E guidance states that "the aim is to encourage active workforce involvement in developing measures to improve health safety". However, worker involvement is far from guaranteed. Management prerogative remains so that consultation, in effect, patronises the workforce.

Australian Co-Regulatory Philosophy

117. By contrast, the Australian co-regulatory approach is pluralist: it acknowledges that differences of opinion exist, that conflict is likely and that provisions need to be made judiciously to control this. The co-regulatory model, supported by issue resolution mechanisms, is founded in *negotiation* rather than consultation.
118. The framework encourages greater involvement because the views of the OHS rep, ergo the DWG, cannot so readily be ignored. The enlightened employer has real scope to optimise OHS standards. I witnessed two examples when I visited the construction companies in Melbourne (Victoria) and Sydney (New South Wales); and I was advised about others from employer representatives and OHS professionals.

Victoria

119. The Victorian co-regulatory model has been somewhat undermined. The political interference of the 1990's has had a damaging impact upon the original statutory intent and upon the regulator. This has upset the OHS dynamics within the state, particularly with regard to stakeholder relationships and confidence.
120. However, there can be no doubt as to the positive contribution of OHS rep enforcement – ie PINs and work stoppages. This is evidently the view held by WorkSafe Victoria, demonstrated by their endeavours to improve OHS rep support and dedicate considerable funding solely to an OHS rep strategy. Their current commitment stands out as confirmation that they support regulated worker empowerment.

South Australia

121. In South Australia the situation is different again, reflecting this jurisdiction's unique OHS outlook. The WorkCover Corporation SA does not comprise the South Australian inspectorate. It deals with worker compensation and OHS advice. It does not therefore
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share the political struggle that regulators like WorkSafe Victoria and HSE face. This is not to detract from its impressive commitment to promoting worker participation, described in the following paragraphs.

122. The WorkCover Corporation requires notification of (a) the establishment/membership of health and safety committees and (b) the names of the OHS reps (because the authority is not the *enforcing* authority, the relationship with reps is very different). This information triggers an education and training programme, run by the Corporation.
123. Committee representatives from both management and workers are provided with information on how to run the committee, examples of agendas and minutes and advice on establishing their terms of reference. They are required to attend training – together! This is to enable committee members to learn and develop competence together and to avoid ‘knowledge becoming power’. Inequalities in OHS competence and negotiating ability are recognised as upsetting the balance of power, whereas providing a basis for informed debate is seen as facilitating mutual OHS understanding.
124. Employers who refuse to attend are challenged about their commitment. Stronger sanctions are available.
125. OHS reps are engaged in an innovative way. Once registered, they are sent an introductory welcome pack and are given membership to a support network. They are entitled to five days training every year. The training is accredited by the WorkCover Corporation and covers such skills as:
 - information acquisition;
 - presentation skills;
 - how to use the Internet;
 - issuing ‘default’ notices (the South Australian PIN); and
 - considering the consequences of OHS rep enforcement action.

A secure website is being developed, restricting access to registered OHS reps. And WorkCover Corporation has appointed approved OHS consultants to provide a source of advice for industry and for OHS reps (for free).

126. WorkCover Corporation South Australia has deliberately embarked on a strategy of education, information and training that is readily accessible to all. It is seeking to avoid the imbalances in power that can otherwise arise. The industrial relations challenge is acknowledged.

New South Wales

127. The worker consultation framework in New South Wales is not one of co-regulation. While new requirements for consultation and safety committees have been introduced, the system remains primarily one whereby union delegates (shop stewards) champion worker safety.
 128. The system of representation is not popular elsewhere. Health and safety may be sidestepped by other issues, and employers are sceptical about rep agendas.
 129. However, of interest when considering options for worker empowerment (and employer incentives) is the prosecution sanction. This has barely been used. I could only establish the existence of two cases: one by the construction union CFMEU following a multiple
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fatality; and the other brought by the Australian Nursing Federation ANF (Appendix 6). The financial cost to the union is virtually prohibitive. And the ANF advised me that, unlike the value of the threat of a PIN, the threat of prosecution seriously jeopardises negotiation.

The Industrial Relations Challenge

130. The Australian Nursing Federation's comments highlight the significance of OHS negotiation and issue resolution as an industrial relations skill.
131. Yet mention of OHS and industrial relations issues in the same breath fuels as much debate in Australia as it does in the UK. Moreover, the argument is not exclusively *between* stakeholders. It can be heard *within* the bureaucracies of WorkCover and HSE. It is clear that each individual has their own point of view. The difficulty is when the point of view is uncompromisingly 'black or white', particularly when it is held by a supposedly 'objective, impartial' regulator – such as an inspector.
132. The Australian inspectors I met gave a range of viewpoints of OHS reps when asked about their experience of worker participation issues. Whilst some demonstrated a clear commitment to a supportive regime, others shared the scepticism common to many HSE inspectors that reps have a hidden agenda – and that they “use” OHS to further ulterior political motives.

My own view is that it is not that simple and I would seek to challenge those who advocate the ready divorce of OHS and industrial relations matters. Yossi Berger, an Australian OHS trade union official, summarises his own point of view with typical flamboyance:

“It's trite to pseudo-cynically state that workers and unions at times use OHS to fortify or alter the character of industrial disputes. Of course this happens, just as some employers and managers use financial mantras, industrial matters, staffing ratios and fear of job-loss to fortify doing 'bugger all' about OHS”.

133. The South Australian WorkCover Corporation's positive approach to worker participation, particularly the joint employer and employee rep training, was therefore of great interest. The Corporation does not assume that workers and their managers share the same interests; but it does seek to find agreement in their desire to sustain livelihoods without workplace injury or death.
134. It is also interesting to consider the Corporation's approach within the context of their separation from the inspectorate. Whilst I recognised clear merits in the Corporation's strategy, I had suspicions that it was made easier by their disassociation from the South Australian inspectorate.

The 'heat' can more readily be removed from their worker participation initiatives; and the enforcement presence is missing. The WorkCover Corporation SA is, in my view, far less likely than HSE or WorkSafe Victoria to become embroiled in industrial relations disputes.

138. The UK system of self-regulation is less empowering of its health and safety reps than an Australian system based upon co-regulation.
139. The HSC definition of consultation, ie providing the workforce with information *and* taking account of their views before making decisions affecting their health and safety, is aspirational. My experience as an inspector of UK consultation in practice is that it does not *effectively involve workers*. It is essentially a one-way, information-giving conduit from employer to worker and does not *require* employers to take workers' concerns seriously. It relies upon employer goodwill and if this is not forthcoming, the UK OHS rep's role can be very challenging. Not least where non-compliance is perceived and is confronted with little armoury.
140. Moreover, the low level of HSE enforcement of worker consultation legislation (eg the 1977 Safety Representatives and Safety Committee Regulations) has contributed to the trade union perception of an imbalance of power between employers and their workforce, strengthening the industry position and weakening that of the trade union OHS movement.

The effect has been to frustrate health and safety representation so that when HSE *is* involved, the experience for the inspector can be arduous. Conflict resolution without the benefit of an issue resolution framework as exists in many Australian states.

Australian Worker Participation

141. Just as worker participation issues feature highly on the UK OHS landscape, so too do they in Australia. Indeed, all of the jurisdictions I visited had this high on their agenda. The recent Victorian and South Australian reviews are contained in Appendices 5 and 7 respectively.

The dearth of data regarding work stoppages and PINs, whilst understandable given the 'no-need-to-notify' policy, is regrettable within the context of the search to measure the impact of these measures on OHS. Clearly formal research is required but the anecdotal evidence *is* valuable because it provides a picture of OHS rep involvement in practice. Moreover, it has enabled the appended reviews to make a very worthwhile contribution to the debate and to our understanding of the key issues.

142. A comparison of UK and Australian OHS rep provisions in theory highlights the greater empowerment of Australian reps and the more comprehensive arrangements for issue resolution.

Australian reps are better placed than their UK counterparts, to overcome health and safety non-compliance in their workplaces. This has to be beneficial to the health, safety and well-being of Australian workforces.

The issue resolution provisions provide a necessary adjunct to ensure fairness during employer/employee negotiations.

143. Given the management prerogative history in both UK and Australian work cultures, the appeal to trade unions of this system of power-sharing and hesitation amongst industrialists are understandable sentiments. However, the anecdotal evidence suggests that the experience of OHS rep 'enforcement' in practice has shaped an approach characterised by caution. The challenging nature of OHS rep intervention is well-recognised by Australian
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trades unions and serves to restrain the desire to act with zeal that was anticipated with concern by the Australian industry.

Recommendations

144. PINs and other OHS rep sanctions, supported by issue resolution legislation, appear to have much to offer the UK system of worker participation. It is recommended that this report is circulated to relevant parties as part of the HSC-initiated debate over proposals to improve worker involvement in health and safety.
145. The system also appears to have potential benefits for HSE itself.
- The rep sanctions appear to provide genuine opportunities for workplaces to manage health and safety internally, without recourse to HSE, freeing up HSE to concentrate on proactive initiatives and the enforcement of recalcitrant employers.
- And the issue resolution arrangements provide HSE with the option of becoming involved only when a health and safety dispute arises *and* issue resolution measures are exhausted, ie when internal negotiation fails.
146. **It is hoped that this report provides a constructive contribution to the UK debate.**

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ANNEXE 1 PEOPLE INTERVIEWED

The anecdotal evidence provided in this report is compiled from interviews with key stakeholders:

- WorkCover policymakers, inspectors and their own OHS reps;
 - Senior trade union officials and experienced blue-collar and white-collar reps;
 - Employer representatives and industry consultants; and
 - Academics and researchers.
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Plus several trade union OHS reps, whose contribution was vital but whose names are excluded for reasons of confidentiality.

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