

**Productivity Commission: National Worker's Compensation and
Occupational Health and Safety Frameworks**

Points from a verbal submission on behalf of the Safety Institute of
Australia by Institute President David Skegg CFSIA P5P(Aust), in Hobart,
Tuesday, 10th June, 2003.

Introduction

1. The Safety Institute of Australia is the professional body representing safety practitioners. It has been in existence since 1947, and is a National body. It has Divisions in each State, and has Chapters for special interests, such as Aviation Safety.
2. The Safety Institute has a number of membership levels, from Affiliate for those with an interest in safety generally, Associate, for the new, inexperienced graduates, Member, for the appropriately qualified and experienced practitioner, Fellow, as the senior practitioner, and Chartered Fellow, a grade by examination, for the senior professionals. Our Patron is His Excellency, the Governor-General of Australia, who confers our Fellowships in person at a ceremony each *year* in Canberra.
3. The Fellows of the Institute form a College, headed by a Dean, and supported by a Scientific Board, to set and safeguard the standards of the Institute, and to advance the science of safety.

Background

4. In August of 1964, a popular Australian magazine, the "Australian Post", published an article "safeguard in a factory". A copy of that article is attached.
5. What that article tells us is that, in the intervening 39 years, *nothing has changed* Industrial safety is still seen largely in terms of human error, which is comforting to managers, as it implies that there is little *they* can do about it. At best, it leads to the notion that all problems of injury and consequential compensation can be avoided by simply telling people to be "more careful".
6. This is at odds with the legal model in Australia, and leads to successful prosecutions in civil litigation, which, in the present day, has become a focus for those who cannot see any other solution to prevention, the industry that surrounds tort actions, and the opportunistic victim-mode mentality activity so often referred to in public discussions on compensation.
7. Many stakeholders have conveniently forgotten that there is a science to safety. The notion of physical reality in accident causation stems

from work in the 1950's, and the basic techniques, such as fault tree analysis, arise from that same era. There have been courses at tertiary institutions for at least the last 25 consecutive years, but still, the practice of safety is often left to the unskilled and unqualified, but well intentioned worker, given the job by the employer, and encouraged by the statutory creation of Workplace Health and Safety Officers, or Safety Representatives, existing in State legislation.

8. That industry will accept advice from an unrecognized practitioner, which, if wrong, could cost them their company, is a testament to how wrong we have got the politics of safety, and how we follow urban mythology instead of science.

Structure of the event process, and how it impacts on compensation

1. There are essentially two aspects to the way in which an "accident"

(more correctly an event) evolves;

- the series of events prior to losing control, or the preventive mode,
and
- the damage mitigation and repair, or reactive mode

9. Compensation is peculiar to the reactive mode, and yet arises from the failure of prevention.
10. At present, there is no real feedback loop between the two that has any meaning or significance. I agree totally with Dr. Wigglesworth in his submission to you, in that, without proper data collection, we have no real idea of what we are doing, and that must lead us to ignoring what should be the targets for action. Dr Wigglesworth's comparison of performance (at p3) is the ultimate story of how we have got it so wrong. How **else** could we go from a ratio **of 5:2 (deaths from infectious disease v accidental injury) to 5:16?**

The law in Australia

11. Under the present Australian safety legislative systems, or more correctly, the way in which the concepts have been implemented, the science of safety has been disenfranchised to the point that, on present trends, there will **be NO** research into what is costed in the industrial sphere alone as a \$21 Billion a year problem!

12. The best way of describing the situation is by allegory. We have legislation based on the Robens report in the United Kingdom. As we have implemented those lofty aims, if **we** applied them to, say, cardiac surgery, when you presented to the hospital to **see** if you needed the surgery, you would be met by a member of the hospital management, a union representative, and someone from the Health Department - BUT

NO SURGEON.

13. We enforce this legislation with law enforcement inspectorates, who, in all States, also have the role of advisor to industry, leaving the ridiculous situation of "I'm from the Government, and I'm here to help you, but, if you're wrong, I'll prosecute". Under the legislative framework, if you were to ask "How high should I build this handrail?" The answer will be "as high as you think it should be, and, if you're wrong, I'll prosecute" No wonder industry wants to revert to prescriptive legislation, and there is good reason. The aviation industry is highly regulated, and has an enviable safety record. Why, then, do we ignore the obvious? If it works in that industry, where the consequences of failure are seen as unacceptable, why would it not work in other high-risk industries, as described by the appalling death rates?

14. These might **be seen** as cute stories, but they explain in simple terms an essential truth. Law enforcement is otherwise dealt with in our society by Police, and they have already established a precedent in the case of fisheries work to take on what might be considered non-traditional roles. Why, then, do they not enforce the will of Parliament in the issues of industrial safety? This would fix the problem of clashing roles for an inspectorate, and put beyond doubt the enforcement of adequate safety measures.
15. In any case, the inspectorates have no hope of doing their job, according to the legislation, any more than does a manager. It is a simple sum to take the number of workplaces, and divide it by the number of possible inspector visits, and see how many years it must be before an inspector will visit a workplace. That is why most inspectorate duties are in the reactive phase of event evolution.
16. A manager is in a worse plight. For some years now, the market has been putting the frighteners on managers by hammering the "duty of care" they **owe** to their employees, the public, and so on. It is not whether the *duty of care* exists or not that should be the focus - it is

the *standard of* care that should apply in the circumstance. To establish that standard requires a technical and professional input.

17. The way in which prevention of unwanted-events can be best managed is largely a matter of engineering and design, and this applies to any field. On this morning's news, New South Wales has announced a campaign of prosecutions in school zones as a road safety measure (Nine News, 10 July, 2003). This is certainly one approach, but the design of schools to remove the children from road traffic areas is another, and arguably a better, mechanism, as it reduces the opportunities for an event to occur (the exposure data that is incorporated as "likelihood" in the Risk Management Standard A54360, and which is the major variable in most instances). I temper these remarks on road safety in the recognition that they have got their politics right, and we have not. The decline in road deaths has occurred, whereas the industrial deaths do not enjoy the same history. Being scientifically correct does not mean success. It is the Beta vs VHS story all over again.

Compensation schemes

18. As no doubt you will hear from others, and discover from your research, there are a number of models we could follow. Most would be preferable to the State-specific schemes we now have, especially in these days of the mobile workforce and company structures, and the effects of the information technologies.
19. A popular notion at this time is to have a single insurer scheme for the whole country. This could be as wide as the ACRC in New Zealand, or an amalgam of the existing schemes, including Comcare.
20. Our interest is different, although I must say that there is a clear and present danger in leaving the matter to those whose primary interest is the sale of premiums, as is evidenced by the staggering effects on our society of that approach in the public liability and professional indemnity markets at present - which are based on the same legal notions as injury and disease.
21. Our interest is to **see** that the performance feeds back to the prevention, so that **we** get a continuous improvement loop.

22. At the moment, the basic statistic used in safety is the Lost Time Injury Frequency Rate (LTIFR). That figure has probably done more damage to the advancement of the science of safety than any other.

- It tells us nothing about what happened
- It tells us nothing about management intentions
- It tells us nothing about causation
- In statistical terms, it is not even a frequency rate
- In fact, if it measures anything at all, it might be the mood of the certifying medical practitioner at the time of the consult.

23. Hence Or Wigglesworth's plea to do something about our data. While this is all we have, we will misdirect and waste resource and effort.

24. In my view, it is time Australia took a long hard look at other models of compensation to deal with this lack of feedback. **In particular, we**

should look closely to ~~see~~ if ~~wee~~ can transplant the German Berusgenoffenschaften, an industry-based insurance scheme that funds prevention and compensation, and adjusts premiums according to the balance of activity and outcomes in both sides of that equation. I urge members of this inquiry to make those investigations, and form an opinion.

25. There are obvious inequities in the way in which compensation is paid to injured parties around Australia. More worrying, however, is the restriction and removal of the common law mechanisms to determine values ascribed to various conditions, and the "Liberace" scenario canvassed some years ago is still valid. (What is a finger worth?) I subscribe to the argument that, if you restrict or remove the ability for values to **be set** by the common law, you have removed society's ability to determine ¹those values, and the alternative is that you end up with a Table of Maims, **set** by a bureaucracy, that must of necessity fail to recognize the individualistic effects of loss.
26. Any compensation scheme that does not support continuing research into the causes that give rise to the need for compensation *as of right*

is flawed. If the prevention of injury and disease does not form part of the compensation mechanisms, then it must ultimately fail.

27. My submission is not a fully referenced academic paper. It is meant to be a wake-up call to look at some fundamental issues affecting the lives and well-being of those who are lucky enough to live in our country, and to direct your minds to the reality of managing risks, as opposed to appealing to the platitudes so prevalent in today's world of safety.

28. There is a science to safety. It has been largely ignored. It needs to be funded. Recognizing that the lack of attention to the science is what gives rise to the **need** of compensation must be fundamental to your considerations.