Socio-Political Context for OHS in Australia

Core Body of Knowledge for the Generalist OHS Professional

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9.1 Socio-Political Context for OHS in Australia

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Socio-Political Context for OHS in Australia

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Socio-Political Context for OHS in Australia

Abstract
This chapter focuses on the socio-political context of occupational health and safety (OHS) practice. It is about the different legal and advisory instruments, government and non-state institutions or actors, economic and social forces, and other factors that constitute the context for OHS practice. Collectively, these contextual elements frame and shape OHS policy, regulation and workplace practice, and they impact on OHS risks and how they are dealt with in these settings. The chapter begins by providing a broad overview of the socio-political context of OHS, and then examines some of its key elements in more detail. These elements are OHS policy and regulation, other regulation impacting on OHS, technical standards and instruments, the education and training framework, employer associations and unions, OHS professional associations, and economic and social trends.

Keywords
Act, law, legislation, inspection, enforcement, regulation, standard, education and training, employer association, union, social and economic trends

Contextual reading
Readers should refer to 1.2 Contents for a full list of chapters and authors and 1.3 Synopsis of the OHS Body of Knowledge. Chapter 2, Introduction describes the background and development process while Chapter 3, The OHS Professional provides a context by describing the role and professional environment.

Terminology
Depending on the jurisdiction and the organisation, Australian terminology refers to ‘Occupational Health and Safety’ (OHS), ‘Occupational Safety and Health (OSH) or ‘Work Health and Safety’ (WHS). In line with international practice this publication uses OHS with the exception of specific reference to the Work Health and Safety (WHS) Act and related legislation.

Jurisdictional application
This chapter includes references to the Australian model work health and safety legislation. This is in line with the Australian national application of the OHS Body of Knowledge. Readers working in other legal jurisdictions should consider these references as examples and refer to the relevant legislation in their jurisdiction of operation.
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1 Introduction

The legal, political, social, economic and technological context of occupational health and safety (the socio-political context) is dynamic, complex and diverse. This chapter examines this socio-political context with reference to a variety of government and non-state institutions and actors, legal and quasi-legal instruments, and other mechanisms of social control and influence. Collectively, these elements impact on occupational health and safety (OHS) and the work of OHS professionals. They variously frame, structure, monitor, interpret or enforce the ‘rules of the OHS game’, and shape the motivations, knowledge and skills, decision-making and actions of organisations and individuals on OHS matters. They may also contribute to the generation of OHS risks and impact on their management.

The chapter begins by providing a broad overview of the socio-political context of OHS, before examining the key elements of OHS policy and regulation, other regulation impacting on OHS, Australian and international technical standards and instruments, the education and training framework, employer associations and unions, OHS professional associations, and economic and social trends.

2 Overview of the socio-political context

Central to the socio-political context is OHS regulation. The term ‘regulation’ is defined here in a 'command and control' sense as the promulgation of laws by government, accompanied by mechanisms for inspecting and enforcing compliance with these laws (Baldwin & Cave, 1999; Black, 2001; Drahos 2017, p. xxvii). Together with the national OHS policy agency Safe Work Australia, the OHS regulators are principal actors in setting OHS standards—the OHS Acts, regulations and approved codes of practice. The regulators are also involved in providing compliance support (awareness raising and guidance), and in inspecting and enforcing compliance. However, these activities are not confined to OHS regulators. Parliaments play a role in setting standards, as do technical standards bodies, and the courts are involved in interpreting the law and determining non-compliance in legal proceedings. In addition, the activities of political parties, employer associations, unions, OHS professional associations, and other interest groups influence OHS policy, regulation and workplace practice.

Casting the net more widely, other elements of the socio-political context of OHS are the laws that incorporate provisions relevant to specific types of work and risks, and the agencies that administer these laws. These include laws relating to: road and rail transport; mining and resource extraction; the maritime industry; industrial, agricultural and veterinary chemicals; building safety; ionising radiation; and electrical and gas safety among others. Also, there are laws and agencies dealing with workers’ compensation and rehabilitation, fair
work conditions, human rights and equal opportunity, and other matters that may impact on OHS practice.

Scanning the socio-political horizon still further, there are Australian and international bodies that issue technical standards; for example, Australian or ISO standards. There are also international bodies such as the International Labour Organisation (ILO), the United Nations (UN) and the World Health Organization (WHO), which prepare conventions, protocols and other instruments that ratifying countries are expected to uphold.

Education and training are crucial to building organisational and individual capacity to deal with OHS matters. For the most part, formal OHS education and training are developed, endorsed and delivered by bodies separate from the OHS regulatory regimes. An array of national, state and territory government institutions, industry and other non-state bodies are involved in these processes, and responsible for the quality of OHS teaching and assessment.

In addition to the different government and non-state actors, laws and other instruments operating in the socio-political context of OHS, there are economic and social trends that impact on OHS in Australian workplaces. These include trends in the nature of work, organisations, business structures, hazards and risks, and the make-up of the workforce. These factors variously shape the organisational, physical and human environments at work. They contribute to OHS risks, and impact on the capacity of OHS regulation to influence organisational and individual decision-making and action on OHS.

This brief overview introduces the complexity and diversity of the OHS socio-political context. Beyond the elements discussed, we could include the civil law, which provides an impetus for improving OHS through legal actions for damages relating to harm arising from work (Foster, 2012, chs. 3-6). We could also include the media (in all its forms), which contributes to shaping and framing public perceptions of OHS, among other influences. While OHS regulation is the centrepiece of the OHS socio-political context, other institutions and actors, mechanisms and trends are part of the wider context. The OHS professional will encounter, and need to understand and deal with, all of these elements to the extent that they are relevant to his or her role in OHS. With regard to those elements that are not explicitly part of OHS regulation, a key challenge for the OHS professional will be to assess whether they support or are consistent with the goals of OHS regulation, or whether they are incompatible or undermine OHS regulatory goals.
3 OHS policy and regulation

3.1 The federal system
The Australian Constitution sets the legislative powers of the Commonwealth, state and territory governments. The Commonwealth has several heads of power it can use to legislate for OHS, and has used these powers to enact OHS legislation covering Commonwealth employees and employees of certain licensed corporations (the Comcare regime) (CCH Australia, n.d.; Johnstone et al., 2012, pp. 92–94). The Constitution does not expressly empower the Commonwealth to legislate generally for OHS, and therefore it falls to the state and territory governments to enact such legislation. As a result of this federal system there are nine sets of general OHS laws—one Commonwealth, six state and two territory sets of laws (CCH Australia, n.d.; Johnstone et al., 2012, pp. 92–94). Of these, seven sets are largely harmonised. In addition, the Commonwealth has used its powers to enact industry-specific OHS laws for the maritime and offshore energy industries, and three states have industry-specific OHS laws for the mining industry (CCH Australia, n.d.). For each set of OHS laws there are separate regulators. There is also a separate national OHS policy body, as discussed next. For an overview of general and industry-specific OHS regulation in Australia see section 3.3 and section 4., and for further discussion of Australia’s federal system, the general OHS laws, and their administration and enforcement see OHS BoK 9.2 Work Health and Safety Law in Australia.

3.2 National OHS policy
The national policy body for OHS (and for workers’ compensation), is Safe Work Australia (SWA), which is an Australian government statutory body established by the Safe Work Australia Act 2008 (the SWA Act). The agency is jointly funded by the Commonwealth, state and territory governments through an Intergovernmental Agreement (COAG, 2008). Formal decision making is by the tripartite SWA council, comprised of representatives of each Commonwealth, state and territory government, representatives of employers and workers, an independent chair and the Chief Executive Officer of the SWA agency. Staff of the SWA agency provide operational support for implementation of SWA’s functions, which are prescribed in the SWA Act and relate to the national model OHS laws, national OHS compliance and enforcement policy, workers’ compensation arrangements and consistency, research and data, and education and communication strategies and initiatives (SWA Act 2008, s 6). As a national policy body, SWA does not administer and enforce OHS laws. For further information about SWA and the preceding national OHS policy agencies, see Johnstone et al., (2012, pp. 128–131) and SWA (2019a).

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1 The Australian Safety and Compensation Council (ASCC) and the National Occupational Health and Safety Commission (NOHSC).
3.3 OHS regulation

Although there are still nine jurisdictions for the general OHS laws (ACT, Cth, NSW, NT, Qld, SA, Tas, Vic, WA), from the 1990s there were concerted efforts to improve consistency in OHS laws across these jurisdictions. A notable development was the preparation of national standards (or model regulations) and codes of practice overseen by the national OHS authority at the time, the National Occupational Health and Safety Commission (Emmett, 1997; Johnstone, 2008). This agency declared national standards and/or codes of practice for plant, certification of users and operators of industrial equipment, hazardous substances, noise, manual handling, major hazards facilities and some other matters (Emmett, 1997; Johnstone, 2008). These model standards and codes were progressively adopted by the Commonwealth, state and territory governments in the form of regulations and approved codes of practice, although the jurisdictions’ regulations and codes often departed from the national models due to local stakeholder interests and political pressures, as well as differences in standards development processes and drafting styles (Johnstone, 2008). The jurisdictions also developed their own regulations and codes on a variety of other topics.

From 2008 there were further efforts to secure uniform OHS laws across all jurisdictions. All nine Commonwealth, state and territory governments committed to adopt national model laws by January 2012, and cooperated in preparing a national model Work Health and Safety Act (the WHS Act) and Regulations, and a series of national model codes of practice (COAG, 2008; Johnstone, 2008). As the agency responsible for national OHS policy, Safe Work Australia took the lead role in developing these instruments, in accordance with the recommendations of a wide-ranging National Review into Model Occupational Health and Safety Laws (Stewart-Crompton, Mayman & Sherriff, 2008, 2009). Safe Work Australia and the jurisdictions’ OHS regulators also developed uniform and cooperative approaches for OHS policy and practice, including a National Compliance and Enforcement Policy, and the provision of guidance about the model OHS laws.\(^2\)

The Commonwealth, four states and two territories adopted the national model WHS Act, Regulations and codes of practice and therefore their general OHS laws are largely harmonised (albeit with some local variations). Two states (Vic, WA) retained their pre-existing OHS laws. OHS professionals require a thorough knowledge of the particular provisions of OHS laws in the Commonwealth, state or territory jurisdictions in which they operate, and how to interpret and apply these provisions in the workplace.\(^3\) That said, there are some common themes in the general OHS laws:

- There are three types of instruments. Each jurisdiction has a general OHS Act that is underpinned by regulations. There are also approved codes of practice. The Acts

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\(^2\) For further discussion of the harmonisation of OHS laws see OHS BoK 9.2 Work Health and Safety Law in Australia.

\(^3\) For details of OHS/WHS laws in the various Australian jurisdictions see CCH Australia (n.d.), Creighton & Rozen (2017), Johnstone & Tooma (2012) and the websites of the OHS regulators.
and regulations are mandatory as they have the force of law, while approved codes are advisory but evidentiary instruments (CCH Australia, n.d.). While failure to comply with an approved code of practice does not in itself render a person liable to criminal or civil proceedings, an approved code can be used as evidence in a prosecution for an alleged contravention of a provision of the OHS Act or a regulation (Johnstone, Bluff & Clayton, 2012, pp. 432–444; Creighton & Rozen, 2017, ch.8). The evidentiary status of codes overcomes restrictions in rules of evidence applied by the courts, which would otherwise require that the authority and relevance of the code to a case be independently proven (CCH Australia, n.d.).

- The OHS Acts incorporate general duties for a range of persons whose actions, as individuals or corporate entities, have the potential to impact upon OHS. The statutory general duties were built on legal principles established under the common law4 (Creighton & Rozen, 2017, chs. 6–7; Johnstone, 2008; Johnstone, Bluff & Clayton, 2012, pp. 70–74). The duty holders have varied over time and across jurisdictions, but typically encompass at least persons conducting businesses or undertakings (PCBUs, in jurisdictions with harmonised laws) or employers and self-employed persons (Vic, WA); designers, manufacturers, suppliers, importers, installers and erectors of plant; manufacturers, suppliers and importers of substances; workers (harmonised jurisdictions) or employees (Vic, WA); and other persons (e.g. visitors to workplaces).

- Duty holders have continuing obligations. They must act responsibly and comply with their obligations as an ongoing state of affairs; compliance is not a one-off event or something that can be done from time to time (Johnstone & Jones, 2006, pp. 483-502). The general duties require duty holders to take positive, proactive and systematic steps to comply with their continuing obligations (Bluff & Johnstone, 2005).

- Consultation with workers is a cornerstone of Australian OHS legislation. All of the OHS Acts make provision for employers or other persons conducting businesses to consult with workers and for workers to be represented on OHS matters, principally through worker OHS representatives and joint worker and management OHS committees (Creighton & Rozen, 2017, ch. 12; Johnstone & Tooma, 2012, ch. 4). Arrangements for worker involvement are further detailed in regulations or approved codes of practice (CCH, n.d.).

As in OHS laws, there are some common themes in the approaches by OHS regulators to securing compliance, inspection and enforcement of OHS laws. Drawing on Bluff & Johnstone (2017); Creighton & Rozen (2017, chs. 9–10) and Johnstone, Bluff & Clayton, (2012, ch. 8), these common themes include:

- The regulators have a broad range of functions, set out in the respective OHS Acts. As well as providing advice and information (compliance support), and inspecting and

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4 The common law is the non-codified body of law developed by the courts in countries with legal systems originating in Britain.
enforcing compliance with OHS laws, the regulators may collect, publish and share statistics and other information.

- The OHS regulators have multi-skilled generalist OHS inspectors. Regulators also may have staff members who are specialists in investigating matters for prosecution, and some may have specialists in engineering, ergonomics, occupational hygiene or psychosocial risks.

- How OHS regulators and field inspectors perform their work is guided by policies, strategies and procedural guidelines. Regulators’ work typically combines proactive interventions and reactive investigations of events (notified incidents or requests for assistance). As OHS laws apply to a vast number of businesses and workers, the regulators cannot engage directly with all of them. They typically prioritise where to conduct their proactive interventions and triage their response to events, and make extensive use of their websites to provide information to support compliance in workplaces overall. The regulators may also collaborate in conducting nationally coordinated campaigns targeting particular risks and industry sectors under the auspices of the Heads of Workplace Safety Authorities (HWSA, 2012).

- The OHS Acts give inspectors broad powers to inspect and investigate OHS matters. Inspectors are empowered to issue improvement and prohibition notices, give infringement notices or ‘on-the-spot’ fines (except in WA), and to prosecute duty holders found to be in breach of the legislation. Also, inspectors may have the power to issue infringement notices and negotiate enforceable undertakings with duty holders. Although the principal penalty for OHS offences is the fine, the courts may impose various types of orders and gaol sentences.

Beyond these central common themes, there are differences between the OHS regulators in the resources they have for supporting, inspecting and enforcing compliance, and how they organise their resources for these functions (Bluff & Johnstone, 2017). These differences extend to the training and development of inspectors, specific functions and activities, and regulators’ and inspectors’ formal and informal approaches to determining what action they take.

For OHS professionals, it is important to have a sound understanding of OHS laws and the role of OHS regulators, in the jurisdictions in which they operate. These provide a framework, mechanisms and support for managing OHS in the workplace, including obligations for those conducting businesses and for their workers, and processes for consultation, managing risks (in general and specific ones), and responding to incidents.
4 Other regulation impacting on OHS

General OHS regulation sits within a wider web of legal regulation. In addition to the general OHS laws there may be multiple avenues for addressing OHS matters generally, or for responding to particular problems. These range from workers’ compensation, to fair work and anti-discrimination regulatory regimes, as well as regimes focusing on specific industry sectors and hazards. The OHS professional needs to consider and take account of different regimes, to the extent that they are relevant to OHS practice in the businesses they work with. As well as providing incentive for preventive action, these regimes may contribute methods and solutions for dealing with OHS problems.

4.1 Workers’ compensation

Closely allied with preventive OHS regulation are the regulatory regimes for compensating and rehabilitating employees (and deemed employees), who sustain a work-related injury, illness or die as a result of their work. There are six state, two territory and four Commonwealth schemes—for Australian Government employees and employees of licensed self-insurers (the scheme administered by Comcare), for certain seafarers, and two schemes for Australian Defence Force personnel (Heads of Workers’ Compensation Authorities, 2019). In the various schemes employers, other than self-insurers, must pay premiums to cover medical, rehabilitation, wages and other costs relating to scheme administration. In addition to supporting compensation and rehabilitation, the cost of premiums may provide an incentive for businesses to improve their prevention and rehabilitation of work-related injuries/illness. How premiums are set differs between jurisdictions but is generally based on employer size, industry, claims experience, and how wages are defined for workers’ compensation purposes. Experience rating may be a component of the premium charged, or for some employers, may be increased (surcharged) or reduced (discounted) according to poor or good performance respectively. In the Comcare jurisdiction, there are no industry premium rates as all employers are experience rated.5

4.2 Workplace relations

Also widely applicable across businesses is the mix of Commonwealth, state and territory regulation for workplace relations. The employment conditions of the majority of workers are regulated by the Commonwealth’s Fair Work Act 2009 (FW Act).6 The Office of the Fair Work Ombudsman (FWO) is responsible for monitoring and enforcing compliance, and assisting

5 Further information about workers’ compensation schemes is provided by Heads of Workers’ Compensation Authorities (2019), Johnstone, Bluff & Clayton (2012, ch. 10) and SWA (2018).

6 Exceptions are state and territory public sector workers who fall within state/territory systems in most jurisdictions.
with the resolution of issues. The Fair Work Commission (FWC) is the national tribunal with conciliation, mediation and arbitration powers. In the construction industry the regulator is the Australian Building and Construction Commission (ABCC), and has a similar role to the FWO. It is important for OHS professionals to be aware that workers may be able to pursue remedies under fair work laws for issues such as bullying, and discrimination or victimisation (e.g. for being involved in OHS activities), in addition to the protections under OHS laws. For example, the FWO may assist in resolving complaints relating to bullying, discriminatory and other types of adverse conduct, and the FWC can make any order it considers appropriate to stop bullying. There are also remedies for dismissal of certain employees in a ‘harsh, unjust or unreasonable’ manner, with the FWC having the power to order reinstatement or compensation of unfairly dismissed employees. Another example of the relevance of FW laws is that the entry permit holder status that empowers worker representatives to enter and inspect workplaces for compliance with OHS laws is granted by the FWC under the FW Act.

In addition to the protections from adverse conduct in FW laws there are separate Commonwealth, state and territory laws aimed at protecting individuals from discrimination at work and in other contexts (Gaze & Smith, 2017). Discrimination may include harassment, victimisation or vilification in relation to a range of individual attributes (e.g. age, disability, race, sex), and unreasonable refusal to accommodate disability or carer responsibilities. The various Commonwealth and state/territory laws overlap and apply in different ways, which means there is a need to comply with all relevant legislation. Although there is an Australian Human Rights Commission, as well as equal opportunity and anti-discrimination agencies in each state/territory, legal actions and remedies (e.g. award of damages) must largely be pursued by affected individuals rather than these regulators. Actions are taken against those acting in a discriminatory way, although employers may be vicariously liable for discrimination by their employees. In the ACT and Victoria, a human rights claim may be added to legal actions as these jurisdictions have human rights charters, which place particular emphasis on public authorities acting in accordance with human rights.

A key issue for OHS professionals is the interface between OHS and anti-discrimination laws. As Harpur and French (2014) highlight, people with attributes protected by anti-discrimination laws (e.g. age, disability, gender) could contribute to OHS risks or be at risk due to these attributes. When OHS and anti-discrimination regimes operate over the same

7 Where parties consent. If parties do not consent, matters go to court.

8 Further information about the regulation of workplace relations and how it impacts on OHS is provided by Creighton & Rozen (2017, chs. 13–14) and Stewart, Forsyth & Irving et al (2016).


10 Further information about anti-discrimination laws is provided by Gaze & Smith (2017) and at the websites of the anti-discrimination and equality agencies: Australian Human Rights Commission https://www.humanrights.gov.au and the state-based equal opportunity commissions.
work relationship (e.g. employer/employee), then OHS issues must be managed with anti-discrimination requirements in mind. However, OHS laws require persons conducting businesses to manage OHS issues in some work relationships that are not protected by anti-discrimination laws, which are more narrowly focused on the employer/employee relationship. In seeking to address OHS issues in a wider range of work relationships, workplace parties will need to take care that OHS solutions are not discriminatory, even though anti-discrimination and OHS laws may not directly align.

4.3 Industry-specific legislation
Scanning the socio-political context further, there are industry specific regulatory regimes that OHS professionals may need to be aware of. For example, there are industry-specific OHS laws for the mining and related resource sectors in three states (NSW, Qld, WA). Professionals working with businesses that engage with transportation, may need to deal with the Heavy Vehicle National Law (HVNL) and associated regulations relating to fatigue management, vehicle standards and other matters, which are administered by the National Heavy Vehicle Regulator. There are also Commonwealth laws dedicated to OHS in the maritime industry, which are overseen by the Seacare Authority; and for OHS, environment and structural integrity in the offshore energy and greenhouse gas storage industries, which are administered by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). 11

4.4 Hazard specific legislation
Rather than an industry focus, some laws are relevant to specific types of hazards. For example, for chemicals there is an array of relevant regulatory regimes including those for the notification and assessment of new or imported chemicals (the NICNAS regime), and for specific types of chemicals and hazardous waste, among others. The OHS professional may need to be aware of these, if they come within the scope of their activities. Especially relevant is the regime for the transport of goods with the potential to immediately injure people or property (e.g flammable liquids, compressed gases and explosives). The National Transport Commission maintains and updates the Australian Code for the Transport of Dangerous Goods by Road and Rail (the ADG Code) and associated model laws. State and territory governments enact the laws for dangerous goods, for which the competent authorities are variously OHS, environment, transport or resources regulators. In a second chemical example, agricultural and veterinary (AgVet) chemicals are registered by the Australian Pesticides and Veterinary Medicines Authority (APVMA), and must be labelled in accordance with that agency’s Agricultural Labelling Code and the Veterinary Labelling

Code. Labels for AgVet chemicals are not required to contain the same information as other chemical substances supplied for use at work. Further information about chemical regulation can be found at the websites of relevant agencies.\(^{12}\) \(^{13}\)

For the hazard of bullying, in addition to the general OHS laws and provisions of anti-discrimination and fair work laws (as outlined above), an extension of stalking provisions in the *Crimes Act 1958* (Brodie’s Law) makes serious bullying a crime punishable by up to 10 years in gaol (Brodie’s Law Foundation, 2019).

For building matters, the National Construction Code (NCC) provides minimum requirements for health, safety, amenity, accessibility and sustainability for new buildings and new work in existing buildings. This code is called up in state and territory laws relating to building, plumbing and drainage.\(^ {14}\) Other examples of hazard-specific regulatory regimes are those for electrical safety and for ionising radiation.\(^ {15}\)

## 5 Technical standards and instruments—Australian and international

Along with the compliance support provided by OHS regulators, technical standards are a valuable resource for OHS professionals. These published documents provide specifications, procedures and guidelines relating to the safety and reliability of products, structures, services and systems (Productivity Commission, 2006; Standards Australia, 2019a). Standards Australia is the peak non-government body responsible for developing technical standards in Australia. To eliminate trade barriers, this institution adopts international standards wherever possible (Standards Australia, 2016). In particular, Standards Australia draws on standards developed by the International Organization for Standardization (ISO standards) and the International Electrotechnical Commission (IEC standards), and many Australian Standards are fully or substantially aligned with international standards. Standards Australia has a formal agreement for preparing and publishing joint standards with Standards New Zealand, and participates in the development of standards internationally (Standards Australia, 2019b).

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\(^{13}\) See also ‘Legislation and Standards’ in *OHS BoK* 17.1 Chemical hazards.

\(^{14}\) For the NCC and additional information see https://ncc.abc.gov.au/ncc-online/NCC.

\(^{15}\) See for example ‘Legislation and Standards’ in *OHS BoK* chapters 23.1 Electricity and 24 Ionising Radiation.
For OHS professionals, technical standards can provide information about what is reasonable for an organisation to do to ensure health and safety, ways to eliminate or minimise risks, and the availability and suitability of particular risk control measures (Johnstone, Bluff & Clayton, 2012, p. 460). Whilst standards are based on accumulated industrial, scientific and consumer experience and reflect established knowledge and despite periodic review, due to the time required for their preparation and the representation of different interests, standards may not reflect the latest technologies and developments.

A particular technical standard does not have legal force unless government has mandated the use of that standard (Johnstone, Bluff & Clayton, 2012, pp. 462–463). That is, technical standards are not legal requirements unless they are called up in mandatory instruments such as regulations. Technical standards have evidentiary status if incorporated in an approved code of practice. They also may have legal standing if incorporated in legal contracts; for example, between a client and a builder or machinery manufacturer.

In addition to technical standards, various international agencies produce instruments that influence OHS policy and practice in Australia. For example, the International Labour Organization (ILO) has issued a range of conventions relevant to OHS (Quinlan, Bohle & Lamm, 2010, p. 316). In particular, the principles of ILO Convention (No. 155) Concerning Occupational Safety and Health and the Working Environment, 1981 have been broadly reflected in Commonwealth, state and territory OHS legislation for many years. The Australian Government formally ratified the convention in 2004 and, in 2008, the panel that made recommendations for the harmonised OHS laws noted that this legislative framework must reflect Australia’s commitment to Convention 155 as well as the ILO’s 2003 Global Strategy on Occupational Safety and Health (Stewart-Crompton, Mayman & Sherriff, 2008, p. xi).

Perhaps the most notable OHS example of Australian adoption of an international instrument relates to chemical substances. Just as global trade advanced the adoption of ISO and IEC standards in Australia, they also spurred the adoption of uniform classification and hazard communication for chemical substances. The United Nations (UN) Globally Harmonized System of Classification and Labelling of Chemicals (the GHS) is a single, global methodology for chemical classification and hazard communication (SWA, 2019b). The provisions of Australian OHS regulations for hazardous substances, and the related codes of practice and guidance for labelling, safety data sheets (SDS) and chemical classification, give effect to the GHS in Australia.  

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16 See also OHS BoK 17.1 Chemical hazards.
In summary, Australian and international standards and instruments are important sources of technical specifications and information. If incorporated in an OHS Act, regulations or approved codes of practice they take on the status of these instruments (mandatory or evidentiary) and, in general, they are valuable resources for the OHS professional.

6 Education and training framework

Within Australia, organisations involved in the development, endorsement and delivery of education and training may have a significant influence on OHS practice. Universities may offer programs designed to prepare participants for OHS roles (e.g. degrees or postgraduate programs in OHS), or they may include OHS content in programs for broader professional roles (e.g. an OHS unit within a business degree). In the vocational education and training (VET) sector there are also dedicated OHS courses (e.g. certificates or diplomas in OHS), and a wide range of trade and other courses include OHS units (Department of Education and Training, 2019). Particularly noteworthy are vocational courses to develop competencies for attaining a licence, or developing particular knowledge and skills as required under OHS laws (e.g. for operation of certain plant and equipment, performing high-risk construction activities, construction induction and first aid).

In relation to university level OHS programs, the Australian OHS Education Accreditation Board\textsuperscript{17} reviews and accredits OHS professional education programs, and supports and promotes OHS professional education (AOHSEAB, 2019a). Particular universities develop OHS programs, which the Board examines against accreditation criteria (AOHSEAB, 2019b). Academic quality and program standards are the responsibility of each university, through its internal procedures for quality assurance.

In the VET sector, national training packages are developed by skills service organisations, with the involvement of industry reference committees, and endorsed by the Australian Industry Skills Committee (AISC, 2019). Nationally recognised training is delivered by a vast network of over 4,500 registered training organisations (RTOs), which include government Technical and Further Education (TAFE) institutes, industry skills centres, other private sector and enterprise-based RTOs, as well as some universities and schools (Braithwaite 2018, p. 8; Department of Education and Training, 2019). In all states and territories, except Victoria and Western Australia,\textsuperscript{18} RTOs are registered and audited by the national VET regulator, the Australian Skills Quality Authority (ASQA), who check their capacity to deliver training and assessment to training package requirements (ASQA, 2019). This agency also

\textsuperscript{17} Established under the auspices of the Australian Institute for Health and Safety. See https://www.ohseducationaccreditation.org.au.

\textsuperscript{18} Victoria and Western Australia have not referred to the Commonwealth their powers to regulate in relation to vocational education and training.
accredits RTOs’ courses against the national training packages. In the other two jurisdictions (Vic, WA), state-based regulators register and audit RTOs that only deliver courses in those jurisdictions, and only to domestic students, and accredit the courses offered by those RTOs.

For OHS professionals, a key issue is whether any university level or vocational training they arrange or participate in is developed, accredited and delivered according to the framework outlined above. Key considerations are ensuring that those teaching and assessing OHS units in these courses have the necessary OHS and educational capabilities. Some potential problem areas to look out for are programs that are too short to enable participants to achieve the required learning outcomes or competencies, that lack practical industry application, that fail to meet language and literacy needs, or that inadequately verify a participant’s identity (especially in online courses) so there is the potential for identify fraud (see for example ASQA, 2013a,b).

7 Employer associations and unions

Employer associations and unions, as the organisations representing the interests of business and workers, play a central role in OHS law, policy and practice, which is reflected in objects of the OHS Acts. The harmonised WHS Acts encourage employer associations and unions to take a constructive role in promoting improvements in OHS practices, and to assist PCBUs and workers to achieve a healthier and safer working environment (WHS Act s 3(1)(c)) (SWA, 2016). In the other jurisdictions, OHS laws provide for the involvement of employer organisations and unions in the formulation and implementation of OHS standards (Occupational Health and Safety Act, 2004 (Vic) s 2(1)(d); Occupational Safety and Health Act 1984 (WA) s 5(e)).

Like the national policy agency Safe Work Australia (see 2.2 above) most of the jurisdictions have tripartite boards, commissions, councils or similar bodies through which representatives of government consult with representatives of business and workers on OHS matters (and also workers’ compensation, workplace relations or other matters in some forums). This means that OHS law and policy is not simply a rational response to accumulated scientific and other research evidence, but the outcome of negotiation between different stakeholder interests (see, for example, Johnstone, Bluff & Clayton, 2012, pp. 171–174).

As well as joining tripartite forums, employer associations and unions may provide OHS support to their members, through national or state branch offices. This may include advice, OHS information or training (some are RTOs), workplace negotiations on OHS matters, or
they may refer members to third parties that can provide this support. In the jurisdictions with harmonised WHS laws, and in Victoria, union officials who are entry permit holders have the right to enter workplaces where they have members (or eligible members) to inquire into suspected contraventions of OHS laws (Creighton & Rozen, 2017, ch.14; Johnstone & Tooma, 2012, pp. 174–182). The provisions reflect research evidence that suggests a link between worker participation and stronger OHS performance, particularly when workers and their representatives are supported by unions (Walters, 2004).

8 OHS professional associations

Among the other non-state institutions and actors shaping OHS policy, regulation and practice are the associations for OHS professionals, both generalist and specialist. In Australia, relevant professional associations include the Australian Institute of Health and Safety (AIHS), the Human Factors and Ergonomics Society of Australia (HFESA), the Australian Institute of Occupational Hygienists (AIOH), the Australian New Zealand Society of Occupational Medicine (ANZSOM) and the Australasian Faculty of Occupational and Environmental Medicine (AFOEM). These bodies support professional education and training, continuing professional development and enhancement of professional standards, as well as networking and engagement among OHS professionals (AIHS, 2019; HFESA, 2019; AIOH, 2019; ANZSOM, 2019; AFOEM, 2019). They also provide collective advocacy of generalist and specialist OHS professional interests and concerns in OHS policy, legislation and other standards development, and other government and industry initiatives to improve OHS. They promote the value and importance of professional accreditation for generalist and specialist roles, and awareness of the contribution of particular OHS professions.

9 Economic and social trends

As well as institutions and instruments that regulate or underpin OHS practice, trends in the nature of work, organisations, business structures, hazards and risks, and the make-up of the workforce are part of the wider context for OHS practice. Some of these economic and social trends have developed over the last few decades (and are set to continue), and others are emerging. They pose major challenges for those managing OHS in Australian workplaces.

19 See, for example, ACTU, 2019; AiGROUP, 2019; AMWU, 2019; Chamber of Commerce & Industry WA, 2019; MBA-NSW, 2019.

20 Membership of ANZSOM includes both medical practitioners and occupational health nurses.
The labour market, work and its organisation have substantially changed in recent decades. Consistent trends are the relatively high proportion of employees who are casuals (20%) or work part-time (30%), and workers who are self-employed (15%) (ABS, 2018; Gilfillan, 2018a; Wilkins & Lass, 2018). These workers are likely to have lower levels of OHS awareness and empowerment for raising OHS concerns (Smith et al., 2015). A practice for some time has been engaging workers through labour hire agencies, but a more recent development is engaging workers through digital platforms or gig work, where there is ambiguity about the responsibility for OHS in the triangular relationship between the platform, the client and those engaged to perform work (AiGroup, 2018; Forsyth, 2016; Minter, 2017; Stacey et al., 2018). Other consistent trends relate to business structures, including franchising, and outsourcing in supply chains, contractor networks and centralised purchasing arrangements (Frazer, Weaven & Grace, 2014; Weil, 2011). Research shows that OHS is constrained and adversely affected in these types of arrangements due to economic pressures, fragmentation of responsibility, uncertainty about where responsibility lies, and limited training for workers (Forsyth, 2016; Haines, 1997; House of Representatives Standing Committee, 2005; Quinlan, 2004; Quinlan & Bohle, 2008).

As a corollary of trends such as franchising and outsourcing, many Australian businesses are small (even very small) in size. Of the 2.3 million actively trading businesses in this country 61% are non-employing businesses, around 27% are micro-businesses with 1 to 4 employees, and around 9% are small businesses with 5 to 19 employees (ABS, 2019a), which account for 44% of the workforce (Gilfillan, 2018b). The characteristics of micro and small businesses mean that they often deal with OHS poorly due to lack of resources and capacity to manage OHS, shorter business life cycles and infrequent inspection by OHS regulators, among other factors (Champoux & Brun, 2003; Hasle & Limborg, 2006; Lamm & Walters, 2004; MacEachern et al., 2010).

Changes have occurred not only in the nature of work, organisations and business structures, but also in the types of hazards and risks arising from work. Employment in the manufacturing industry has declined in Australia, and higher employing sectors are now construction and services (including health care and social assistance, retail, education and training, accommodation and food), which has shifted the pattern of occupational injury and illness towards musculoskeletal and psychosocial disorders (Bluff, Gunningham & Johnstone, 2004, pp. 1-3; Vandenbroek, 2018). Advances in artificial intelligence (AI), and information processing and communications technology (ICT) are changing the nature of work, also with ergonomic and psychosocial impacts (Buchanan et al., 2018, p 13; Horton et al., 2018; Moore, 2019; Stacey et al., 2018). In addition to more longstanding hazards/risks, OHS professionals will need to be aware of the potential impacts of AI and ICT; for example, technology enabled monitoring and surveillance of workers, blurred boundaries between work and private life, ergonomic risks relating to working with devices, the pace of change in

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21 See OHS BoK 4.2 Work as a Context for OHS.
22 For example, sole traders or partnerships without employees (Gilfillan 2018b).
work and technology, and cyber-security risks relating to devices internet links (Horton et al., 2018; Moore, 2019; Stacey et al., 2018).

A further trend relates to the make-up of the Australian workforce. There has been a steady increase in female participation over several decades and women now make up 47% of the workforce, often in casual, temporary and part-time work (ABS, 2019b; WGEA, 2019). In addition, the average age of Australia's workforce is increasing as the population ages as a whole, and older Australians are needing to stay in the workforce longer (ABS, 2008; Horton et al., 2018). The OHS problems of an aging workforce lie both in the greater risk of musculoskeletal injury relating to manual tasks for this group of workers, and psychosocial demands relating to rapid changes in the nature of work and technology (ASCC, 2005; Horton et al., 2018; Macdonald et al., 2012). A further workforce trend relates to migrant and guest workers, with the latter accounting for around 650,000 temporary migrant visas (TMVs) with working rights (DIBP, 2016; Productivity Commission 2015, p. 916). Migrant and guest workers may be less able and more reluctant to raise or respond to OHS issues due to language barriers, low levels of skill and training, visa limits and concerns about visa cancellation (Boyle et al., 2015a,b; Productivity Commission, 2015, p 919; Reid et al., 2014; Sargeant & Tucker 2009).

The economic and social trends outlined here are only partially addressed in OHS laws in Australia. For example, in the harmonised OHS laws the primary duty of care is owed by PCBUs to all workers engaged, influenced or directed by the PCBU (S WA, 2016). Thus, the primary duty of care embraces new and evolving work arrangements. Also, the PCBU duty is to eliminate or minimise risks to health and safety so far as is reasonably practicable, which embraces new and emerging risks, and to all workers, regardless of their gender, age, country of origin, or other individual characteristics. However, OHS laws are inclusive through broad, general duties and processes (e.g. risk management, consultation), which do not specify how to deal with OHS issues in the context of particular forms of worker engagement, work organisation, business structures or workforce groups, or hazards and risks not specifically addressed in OHS regulations or codes of practice. For OHS professionals, key actions will be those relating to due diligence – acquiring and keeping up to date knowledge of OHS matters, understanding the nature of hazards and risks associated with the undertaking’s operations, and securing appropriate resources and processes for eliminating or minimising risks (SWA, 2016). And it may be particularly important for OHS professionals to share their efforts with the smaller businesses they engage with, in order to help overcome their well-recognised struggles with managing OHS and complying with OHS laws.

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23 See also OHS BoK: 4.1 Global Concept: Work.

24 Issued to overseas students, temporary skilled workers and working holiday-makers.
10 Summary

This chapter has introduced the socio-political context that impacts on OHS and the work of OHS professionals through a complex and diverse, but interconnected, set of elements—legal and quasi-legal instruments, government and non-state institutions and actors, and other agencies and mechanisms of social control and influence. The chapter has shown how different contextual elements variously frame, structure, monitor, interpret or enforce the ‘rules of the OHS game,’ influence the motivations, knowledge and skills, and decision-making and actions of organisations and individuals on OHS matters, and contribute to the condition of health and safety in the working environment. The chapter has highlighted the central place of OHS regulation (legislation and enforcement) in the socio-political context, including developments in harmonising OHS regulation. It has explained the links between OHS regulation and other regulation, technical standards and instruments, the education and training framework, employer associations and unions, OHS professional associations, and social and economic trends in work, organisations, technology and the workforce. While these are core influences on OHS practice, they are illustrative rather than exhaustive and others could be canvassed.

For OHS professionals, the key implication is that many different agencies or actors, instruments or mechanisms frame, shape and regulate OHS policy, regulation and practice, in terms of steering the course of events (Parker & Braithwaite, 2013). Identifying, interpreting, analysing and evaluating the relevant elements, and their influence in particular settings, are fundamental aspects of the role of the OHS professional. The socio-political context poses many challenges for OHS professionals. A critical consideration is whether particular elements support or are consistent with the goals of OHS regulation, or whether they are incompatible or undermine OHS regulatory goals and, if so, how to address them.

Key authors and thinkers

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9.1 Socio-Political Context for OHS in Australia


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