

Legislation in Australia: Social Control or Education?

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The primary function of legislation in Australia is that of an educative one rather than an enforcement role. An example of legislation the main function of which is to educate is the Occupational Health and Safety Act, 1985 (O.H.&S. Act). The main aim of the Act is to legislate for a safe work place, breaches of the Act can induce human suffering, therefore the Act is designed to prevent workplace accidents, not to prosecute.

The O.H.&S. Act was introduced after a time of social change. The sixties and seventies were times of protest on matters concerning equality for women and for many underprivileged groups. As a result of this, a demand for the rights of safety within the workplace followed. With the advent of the Act in 1985 came a legitimisation to the premises of workplace health and safety. The demands for workplace health and safety were recognised by the government and it accommodated by legislating for a safe workplace. The OH & S Act satisfies a need to educate the public on workplace safety and the right to workplace rehabilitation after a workplace illness, by using many social mechanisms. These mechanisms include the set up of a beurocratic organisation—Workcover, to administer the Act. Workcover educates the public through the use of training schemes, graphic television commercials and standards as a guide to correct practice. Evolution of the Act to management of safety by employers and employees demonstrated that legislation is a self-referential system that has feedback loops which are the result of the education of society. The mechanisms used in the processes of education are socially constructed. Legislation is therefore used to guide society into acceptance of an ideal/framework.

A Report of the Committee on Safety and Health at Work 1970-1972 (The Roben's Report) set out standards of safety to be met by employers¹. The legislation changed from that which was 'prescriptive in nature—stating exactly what was required or prohibited in the work force' to the Roben's style legislation which encouraged the interaction of employer and employee in the solution to the specific problems of the workplace. The main aim of the Act is to 'provide a framework for improving standards of workplace health and safety and reducing work related accidents and diseases.'² 'This was the

result of a societal movement which demanded work place safety. The law therefore reflected the expectations of society, indeed it is as Twyford states—'the law is very much conditioned by who we are!'³.

Social construction is an integral part of life, acknowledging social construction means understanding that 'people render the world they (re)cognise *coherent* with the intellectual structures they already have'⁴. The Act was established using existing knowledge of the needs of employees for a safe workplace and the fact that society was demanding a transfer of right from the employers to the employees. Therefore the Act was a result of social construction and the use of mechanisms which accommodate these existing structures.

This transfer was a long process which involved a societal framework change. The history of the sixties and seventies is a 'story of the switch from an old paradigm to a new one'⁵. This new paradigm saw people rights as paramount. No longer were the master-servant relationships accepted. The worker was seen to have rights to safety and rehabilitation after a workplace accident. The advent of the O.H.&S. legislation gave credibility to the notion of workplace health and safety. Therefore the legislation provided a vehicle for education about the risks and the rehabilitation available.

A societal framework change is a process which involves many stages of legitimation. The community must be convinced that the concept is logical and that the community must change its ways. The way society functions ensures that previous ways of doing things are ingrained in us from an early age. These 'Informal structures' are the unwritten rules of society such as 'dress codes, eating habits and language styles'⁶. The expectations of society which are based on these informal structures produce formal structures such as the O.H.&S. Act. For instance the way we drive on the left hand side of the road is automatic and unquestioned⁷. The social constructions—the way society influences us—are deeply ingrained in us so it takes a lot of education and persuasion for people to redefine the way they think.

The Government reacted to the community pressure for safety

for workers and introduced the O.H.&S. Act of 1985. With the Act a whole bureaucratic process was set up to administer the Act to ensure that society is aware of the processes which have to be followed for a safe workplace. The system is one which is geared towards education and not punishment for non-compliance. If an unsafe situation occurs the Health and Safety Representative first issues a Provisional Improvement Notice (PIN) which issues 'written directions to employers and other persons requiring action to be taken to bring working conditions into compliance with the law or stop immediate threats to health and safety'⁸. Thus the Act gives an employer time and warning to comply with the provisions of the Act before prosecution. It educates the employer about the risk and the alternatives for a safer work place before prosecution.

The O.H.&S. legislation adds credibility to the demands of workers for a safe workplace. The legislation acts as a legitimisation of the concept of workplace health and safety. Legitimation illustrates that there is an authority which is willing to support the premise behind the Act. The Act was accepted by the Government as an effective means of ensuring workplace safety. This acceptance means that the concern is legitimate to the Government⁹. If someone has a complaint which has to do with safety—the Act is consulted to legitimate that complaint. Thus the Act enables people to be educated about their rights as workers if they have somewhere to go to validate their complaint and a process to follow to ensure that the work place is hazard free.

Compliance with the legislation indicates a commitment to the safety of the workers and that the duty of care is taken seriously¹⁰. This was demanded by the movements which led up to the advent of the legislation. If Employees see that the employer is taking the Act seriously they see that the employer agrees with the need for a safe workplace. The employer, in using the Act, educates the employees on maintaining a safe workplace and is therefore adding credibility to the legitimisation that has been lent to the Act by the Government.

A social mechanism that brings people to awareness are the training courses offered by various organisations such as the Victorian Trades Hall Council and Victorian Employer Chamber of Commerce and Industry. Such courses ensure compliance with the Act by illustrating the need for a safe workplace and the ways in which this can be achieved. The legislation requires that people are aware of the required work place conditions set out in the Act, this ensures that people are educated in what is a healthy working environment. Section 31 (2) (d) of the O.H.&S. Act confers an entitlement to paid time off work to attend training seminars. Training is incorporated into the Act and is in line with the main aim of the Act and is essential for the dissemination of information to employees.

Television commercials which depict situations where people have suffered as a result of an unsafe workplace are used as a vehicle for education for the wider community. They show the effects of an unsafe workplace that the Act legislates against. Stories which viewers can relate to, encourage people

to be aware of the legislation as it justifies the standards incorporated in the Act. The graphic depiction of human suffering as a result of a workplace accident therefore justify the provisions of the Act. The commercials are also a social mechanism as they work with the knowledge that people learn when they can compare the situation to their own.

Inclusion of detailed standards which educate people on requirements in specific areas ensure that criteria that need to be, are met. Standards are 'social agreements'¹¹ about the way people should interact with their environment. Standards in Australia are generated by Standards Australia which is a voluntary organisation which responds to requests from the community for a new standard. The standard is not developed by the Government or its bureaucracy¹². Therefore the development of a Standard reflects a community awareness of the need for the particular form of safety. These standards have been incorporated into the Act as it has been amended since 1985.

Standards are incorporated into the Act and act as a social mechanism for education as they recognise that people need specific guidelines which state what is an effective behaviour. Standards in society are needed as, if one can follow a specific set of guidelines, it shows that it has been assessed by an informed group of people and has been found to be reliable. If an authority has sanctioned the standard it is accepted as accurate and is used, therefore it is an important part of maintaining a safe work place and the legislation acknowledges this.

Standards indicate that the set of criteria is consistent with the assessment mechanisms with which society has deemed compliance is necessary. These are mechanisms that society has put in place to educate and ensure repeatability, precision, measurement. The scientific backing to the Act gives it validity. It aids in the legitimisation of the premise of the Act and promotes compliance with the Act. An example of this is the use of ergonomic furniture. The Act requires that employees be provided with an ergonomic chair, Standards outline the specification for the type of chair which is optimal for the reduction of back strain. Guidelines for the chairs are very specific which increases confidence in the specifications.

When a work related accident occurs in the workplace the O.H.&S. Act requires that a rehabilitation scheme is initiated where possible. Through this process the entire workforce learns about prevention of the further accidents as the unsafe condition has to be remedied and an injured worker has to be accommodated and rehabilitated. Therefore the Act, instead of recommending that people stay at home and receive compensation, encourages a return to work so that the problem is addressed by the entire workforce. This in itself is a mechanism which acknowledges existing ways of learning and utilises this to form an educating mechanism as it raises awareness. Therefore it could be seen that the legislation explicitly utilises social mechanisms to fulfil its primary educative role.

Modern administration of the Act gives a lot of responsibility to the employers and employees, 'workers are left to negotiate their own health and safety standards'¹³. The public, 15 years after the introduction of the Act has been educated enough to test and maintain the safety of the workplace. The Act has operated as a self referential system, and has been amended with the impact it has on what it is legislating. A positive feedback loop therefore exists, which is 'the conveying of information about the outcome of any process or activity to its source'¹⁴. That is the impact of the legislation is fed back into the system which in turn alters the legislation to accommodate the change and so on.

The O.H.&S. Act's main function is educative rather than plenary which is the primary function of legislation in Australia. Work place safety is essential and the prevention of work place accidents and disease is the main premise of the Act. People's health at work was seen as priority in the sixties and seventies which was a time of a paradigm shift which saw the employees' rights to a safe workplace as important, abolishing the master-servant relationship which previously dominated. To enable the safety of the work place a bureaucratic process was set up to enable the education of the public, which is a social mechanism in itself. The Workcover Authority uses many social mechanisms to educate for a safe work place. Graphic television commercials and training schemes utilise knowledge of the way society functions in order to educate. ⑤

Notes

- ¹ 'Occupational Health Compensation—Australia'. Australian Employment Law guide Page 62-100.
- ² Guide to the Occupational Health and Safety Act. 1985. Workcover. Page 5.
- ³ Twyford, J. 'The layman and the law in Australia'. Page 1.
- ⁴ Fisher, F. 'The Fourth E: Educating for Energy, Environment & Economics'. Page 20.
- ⁵ Clarke, R. 'Notes for the Future'. Page 11.
- ⁶ Fisher, F. 'An effective way to act on what concerns you'. Page 4.
- ⁷ The fourth E: Educating for Energy, Environment & Economics. Fisher. Page 20.
- ⁸ 'Guide to the Occupational Health and Safety Act 1985'. Workcover. Page 19.
- ⁹ Fisher, Frank 'An effective way to act on what concerns you'. Page 4.
- ¹⁰ 'Occupational Health Compensation—Australian'. Employment law guide. Page 61,024.
- ¹¹ Fisher, F. 'An effective way to act upon what concern you'. Page 3.
- ¹² Standards Australia website. June 16, .5:45 p.m.
- ¹³ Victorian Trades Hall Council Brochure. Health and Safety Training Programme. March-August 1999.
- ¹⁴ Capra, 'The Web of Life'. Page 56.

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