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***The implementation of OHS  
Process Standards in Australia***

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**&**

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**National OHS Regulatory Research Consortium,  
NRCOHSR, ANU, February 2007**

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# Overview of Presentation

- Background
  - OHS Process Standards Project Outline
  - Preliminary Findings
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# Background/Context

- OHS legislation in Australia is largely state/territory responsibility
  - State OHS agencies independently coordinate implementation of OHS legislation at policy & operational level, although there have been various initiatives to develop uniform statutes, regulations and codes; and to co-ordinate inspection and enforcement
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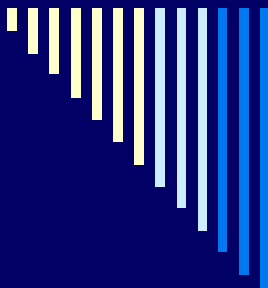
# Broader context

- Growth of systems language in management & ISO standards/ quality movement (international)
  - Foreign firms introduce systems (eg Shell, Exxon)
  - Systems idea embraced by OHS professions, industry bodies, educators & consultants (eg NSCA & DuPont)
  - Australia developed systems standard (AS4801,2) when international move floundered. Influential reference point
  - Regulatory pressure for systems (from environmental concerns to demands for accountability/governance)
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# Broader context

- Develop systematic OHSM guides & audit tools (eg Vic SafetyMap) or induce employers to develop own (eg NSW)
  - International trend to include risk management standards in OHS statutes (eg EU Framework Directive 1989) and enforcement approaches (eg Swedish 'Systems Supervision; Danish Adaptive Inspection; US Construction 'Focused Inspection' etc )
  - Pressure to contain costs from workers' compensation agencies
  - Pressure for accountability within government
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# Refashioning OHS Regulation

- Major shift in Post-Robens OHS Law in Australia over 15-20 years has been shift to process & performance standards
  - Key features
    - Introduction of general duty provisions (prior laws mainly specification standards)
    - Move to a single OHS regulation, using mainly process and performance standards
    - Participatory provisions (committees & HSRs)
    - New range of enforcement tools, larger penalties and increased inspectoral powers
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# General Duty Provisions

## □ General duty provisions

- Cover array of parties (designers, suppliers, manufacturers, employers, self-employed/contractors, labour hire workers, employees) & include duties to non-workers (eg public, volunteers)
  - Cover broad array of hazards (plant, ergonomics, substances, psychosocial)
  - Broadly interpreted by the courts
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# General duties and risk management principles

- [employer must take] a structured, systematic approach to safety in everything which is touched by the operations of the defendants. It is not enough to endeavour to comply with these obligations on an ad hoc basis looking at particular matters from time to time. .... Employers are required to actively assess and take account of all risks that might foreseeably arise. Systems need to be created to deal with these risks and, to the extent possible, eliminate them. Employees need to be instructed and trained to apply these systems. The employer needs to assess from time to time whether those systems are working and whether employees are following them. This involves supervision (NSW Case)
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# Risk management and the OHS statutes

- Duties to take proactive risk management approach are amplified in regulations & codes of practice (guidance only – no clear solutions)
- Queensland WHSA (s 27A) is the only principle enactment which explicitly invokes the risk management process: effectively provides that “to manage exposure to risks” in the workplace, a duty holder “must identify hazards, assess risks that may result because of the hazards”, must work through a hierarchy of controls to choose and implement appropriate controls, and must monitor and review the control measures.
- This is reinforced by *Workplace Health and Safety Risk Management Code of Practice*
- ~~NSW & Tasmania have risk management provision in regulations (equal force to principle act but lower penalties)~~



# Inspection and enforcement

- **Informal sanctions: persuasion, advice, warnings and threats.**
  - **The formal sanctions include:**
    - **improvement notices (hazard be remedied within specified time)**
    - **prohibition notices (requiring work cease until hazard removed)**
    - **New South Wales, Victoria, Queensland, Tasmania, the ACT and the Northern Territory: infringement notices ('on-the-spot fines)**
    - **Enforceable undertakings (Victoria, Queensland, Tasmania, the ACT and Commonwealth): empower the inspectorate to accept a written undertaking about remedial measures for a detected contravention of the OHS Act, rather than proceeding with the prosecution. If the undertaking is breached, a court may make appropriate orders.**
    - **Prosecution**
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# Recent new sanctions for successful prosecutions

- ❑ adverse publicity court orders: the court orders the convicted defendant to publicise the offence, conviction and penalty (NSW, Victoria, SA and the ACT)
  - ❑ a court order that the offender participate in an OHS-related project (NSW, Victoria and SA)
  - ❑ an order requiring the defendant to take remedial measures (NSW and the ACT) or to undertake training (SA);
  - ❑ adjourning the case with or without conviction and requiring the defendant to give an undertaking not to re-offend within 2 years and to engage a consultant, develop systematic OHS management, and have the OHS management approach monitored by a third party (Victoria).
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# National Project: Project description

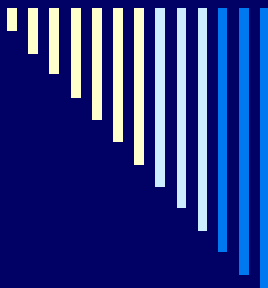
- ❑ Four year federally (ARC) funded research project examined shift to process standards in four jurisdictions (Tas, Vic, WA & Qld)
  - ❑ Used documentary & statistical analysis, interviews with and observation of inspectors
  - ❑ Similar projects in Sweden, Denmark, Canada
  - ❑ Data gathering 98% complete – preliminary findings
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# National Project: Six focal areas for examining standards shift

- Plant
  - Lifting limits/manual handling
  - Hazardous substances
  - Changing Labour market & work arrangements
  - Systematic OHS management
  - Upstream duty holders (designers, suppliers etc)
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# National project: Workplace visits in jurisdictions (matched)

- ❑ Manufacturing plants/factories
- ❑ Construction sites (civil, commercial, residential)
- ❑ Warehouses, equipment hire, garages and retail outlets
- ❑ Schools, childcare centres, correctional facilities
- ❑ Hospitals and nursing homes
- ❑ Farms and vineyards, forestry coops, sawmills
- ❑ Others (tips, ski resort, fairground, auto repair/wreckers)



# National project: Transcribed interviews (as at December 2006)

Managers    Other\*    Ex-Insp Inspector\*\*

<input type="checkbox"/> Queensland	10	4	8	38
<input type="checkbox"/> Tasmania	6	8	6	16
<input type="checkbox"/> Victoria	7	3	4	26
<input type="checkbox"/> W Australia	6	1	3	25

\*Policy advisers, ex agency managers, union & employer reps

\*\* Excludes follow up/second round interview with same inspector



# National Project: 1<sup>st</sup> & 2<sup>nd</sup> round visits with inspectors\*

	2004	2006
<input type="checkbox"/> Queensland	12	11
<input type="checkbox"/> Tasmania	8	9
<input type="checkbox"/> Victoria	12	12
<input type="checkbox"/> Western Australia	10	10

\* Some inspectors visited over one workplace on day so total visited exceeds 50 in each round. At least 40% of visits with outside capital city office/s (eg Ballarat, Traralgon, Launceston, Bunbury, Karratha, Cairns & Gold Coast)

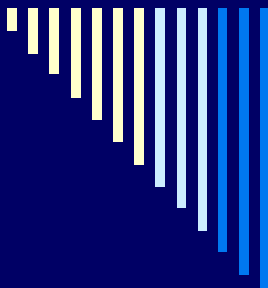
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# 1<sup>st</sup> & 2<sup>nd</sup> round visits : type of visit

	2004	2006
<input type="checkbox"/> Routine	30	24
<input type="checkbox"/> Response to complaint	12	10
<input type="checkbox"/> Targeted campaign	9	13
<input type="checkbox"/> Investigation	9	10
<input type="checkbox"/> Other/unclear	1	0
<input type="checkbox"/> Total	61	57

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# 1<sup>st</sup> & 2<sup>nd</sup> round visits – who was spoken to (rank)

	2004	2006
<input type="checkbox"/> Manager/owner	41 (1)	39 (1)
<input type="checkbox"/> Other supervisors	30 (2)	25 (2)
<input type="checkbox"/> Workers	25 (3)	25 (2)
<input type="checkbox"/> Health & Safety rep	24 (4)	19 (4)
<input type="checkbox"/> Contractors	8 (5)	4 (5)
<input type="checkbox"/> OHS Consultant	3 (6)	2 (6)

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# 1<sup>st</sup> & 2<sup>nd</sup> round visits: what was examined (rank)

	2004	2006
□ Plant/equipment	46 (1)	39 (1)
□ Manual handling	20 (6)	22 (6)
□ Hazardous substances	31 (2)	24 (3)
□ Changing work arrange	29 (3)	23 (4)
□ Upstream duty holders	23 (5)	23 (4)
□ OHSM Documentation*	29 (3)	29 (2)

\*Wide definition includes system components like incident reporting systems



# 1<sup>st</sup> & 2<sup>nd</sup> round visits: Actions taken

	2004	2006
<input type="checkbox"/> None/info/entry report	34 (1)	25 (1)
<input type="checkbox"/> Verbal directions	17 (3)	13 (3)
<input type="checkbox"/> Improvement notice	19 (2)	21 (2)
<input type="checkbox"/> Prohibition notice	7 (4)	7 (4)
<input type="checkbox"/> DG Licence Granted	6 (5)	1 (5)
<input type="checkbox"/> Total workplaces visited	61	57

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# 1<sup>st</sup> & 2<sup>nd</sup> round visits – standards called up

	2004	2006
<input type="checkbox"/> Only specification	8	3
<input type="checkbox"/> Mostly specification	10	5
<input type="checkbox"/> Mixed (50/50)	10	4
<input type="checkbox"/> Mostly process/performance	13	2
<input type="checkbox"/> Only process/performance	7	9

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# Preliminary observations I

- Shift from specification standards to process/system & (to lesser extent) performance standards began in 1980s but slow to build momentum (in interpretation/development of standards, and in implementation strategies)
- Still use mix & debate as to whether overall level of specification has diminished (cyclical too?)
- Generally codes advise & regulations mandate but some industry codes contain mix (eg 3 tier mix of 'must do', are 'advised to' in Tasmania)
- Development of industry-specific codes (eg forestry) as well as generic codes (eg manual handling, labour hire)



# Preliminary observations II

- Inspectorates in the early 1980s were largely centralised (policies, procedures and decision-making)
  - Beginning in mid- 1980s, shift to regionalised model (especially decision making)
  - From late 1990s, many jurisdictions shifted to multi-industry teams (eg Victoria) or adopted an industry and hazard focused organisation (Tas and WA)
  - Queensland – regionalised, with general industry, construction and some health/ergonomics and psychosocial specialists
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## Preliminary observations III

- Size of inspectorates increasing, but still understaffed (1280 inspectors/field staff in 2005) so that no prospect of regular visits to all workplaces
  - Recruitment of inspectors (formerly principally from industry) now more diverse – demographically, from more occupations and more graduates
  - Training of inspectors significantly better (inspection/investigation and understanding of hazards).
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# Preliminary observations IV

- Still significant tension between proactive and reactive inspections, resulting in a strong focus on incidents events rather than on systematic OHSM
  - More complaints to respond to
  - Investigations more carefully targeted to serious incidents and issues, with better supervision of the process; and in some jurisdictions (eg Victoria and Queensland) are conducted by specialists
  - Proactive inspections less random, and greater targeting in programs (regional, state and nationally initiated)
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# Preliminary observations V

- Inspectors have surprisingly little contact with HSRs and HSCs (at beginning, during or at end), or with workers;
  - Little attention to management support for HSR and HSC processes
  - Almost all dealings are with relevant managers (do Australian inspectors spend too much time doing the OHS functions of managers – ie assessing the risks?)
  - Even though there has been much rhetoric about inspectors taking more of an ‘enforcement’ approach, still spend a lot of time giving advice to managers
  - consequently inspections take a lot of time (and there appear to be fewer workplace visits per day per inspector than in the past)
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# Preliminary observations VI

- Although clearly more focused on systematic OHSM than in the past, still relatively little focus on systematic OHSM in inspections
- Desk audits of OHSM generally observed only where particular program required it (eg manual tasks in nursing homes etc)
- Heavy emphasis on walk round inspections, where focus varies but predominantly on inspection of physical conditions.
- Apart from major hazard facilities, observed no inspections of OHSM itself. Inspectors don't assess how managers assess and control risks: rather inspectors assess risks and require controls to be implemented
- Inspectors do focus on systematic OHSM more than in the past, but still informal and generally don't examine 'the management of OHS behind the safety'

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# Inspectoral activities - manual handling

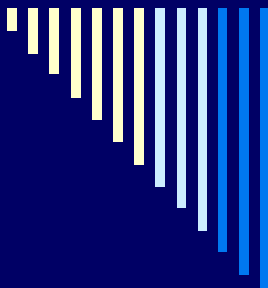
- ❑ Difficult area but little law in past (ie lifting limits) & most see law/guidance material as advance
  - ❑ New standards have had positive effect but off low base
  - ❑ Most inspectors comfortable with new standards though focus depends on industry (in some other problems seen as more pressing eg construction in Qld)
  - ❑ Issue of smaller employers unable to do risk assessment
  - ❑ National MH audit in nursing homes seen positively but employers had compliance incentive (certification)
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## Inspectoral activities - hazardous subs (including dangerous goods)

- ❑ Like plant, mixed views as to adequacy of present law (more likely to acknowledge past deficiencies)
  - ❑ Some jurisdictions use safety case regime in high hazard industries (eg Victoria). Vigorous auditing needed.
  - ❑ Other inspectors enforce but resources limit activity (eg solvent dips in auto repair shops)
  - ❑ Dangerous goods still dealt with under specification standards (inspectors not confident unless background)
  - ❑ Overall, inspection activity appears to have increased but still doesn't match significance
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# Inspectoral activities – management systems/audit tools

- No agency directly mandates systems.
  - NSW mandates risk assessment like EU and arguably implicit in general duties of other jurisdictions
  - Several produce audit tools (Worksafe Plan & SafetyMap)
  - Inspectors-mixed views on value of audit tools & evidence of weakening support (paper compliance problem)
  - Inspectors use compliance audit tools in target campaigns
  - Few inspectors develop audit tools (exceptions eg forestry)
  - More involved in developing industry codes with audit tools, checklists or systems components (stakeholder role?)
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# Inspectoral activities – systematic management continued

- Most inspectors not system-driven but try to connect hazards to decision-making processes (repeat visits)
  - Past 20 years marked shift from technical focus on hardware to SOHSM (even plant focus on work system). Relationship of OHSM desk audit to inspector walk through varies
  - Problems
    - small business (but note Qld small bus advisors etc)
    - Often confront serious hazards (systems need repeat visits)
    - Receipt of audit tools vary (shearing shed v vineyard)
    - Some govt departments poor at implementing systems (eg schools)
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# Work arrangements/Psychosocial Factors: Queensland example

- ❑ Three dedicated inspectors have developed policies & procedures to deal with psychosocial issues
  - ❑ Have focused on harassment & on reactive inspections to complaints & injury reports
  - ❑ But strong focus on OHSM
  - ❑ Each mentoring another inspector
  - ❑ Plan to broaden approach to other psychosocial issues in future
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## Inspector activities – upper stream duty-holders

- Limited action in this area though agencies beginning to address (eg designers, engineers but not architects)
  - Address by following issues back to supplier/designer, rather than by programs focusing on up-stream duty holders
  - Resourcing & jurisdictional issues (eg where equipment like cranes supplied from interstate/overseas)
  - Two other examples (oxy cylinder caps [WA] & trolleys at supermarket [Vic])
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# Challenge Change and Debate

- Business size affects capacity - adapt standards & enforcement?
- Inconsistent stakeholder demands-employers want flexibility, clear direction & consistency & unions want specificity & broad duties
- Industry involvement in developing codes aids clarity, focus & compliance but delays, trade-offs & complexity
- Auditing SOHSM & other 'paper' compliance (eg plant inspection checklists)? Implementing systems is resource intensive
- Coordinating multi-agency dealings (conflicts of policy & regulation eg retreat of IR) & optimise inter-jurisdictional co-op?
- Addressing psychosocial, work change & upstream duty-holders  
~~(do address but legal, strategic & resourcing issues).~~



# Problems implementing OHSM systems in Australia

- ❑ Lack of single national approach (although shouldn't exaggerate benefits of this)
  - ❑ Limited inspectoral resources
  - ❑ Failure of employers to commit resources to developing effective OHSM (worker involvement & auditing)
  - ❑ Changing IR climate encourage dictatorial management & discourage worker reporting of OHS issues
  - ❑ Changes to work organisation (downsizing, outsourcing) & growth of contingent workforce undermine systems
-