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A ‘ONCE IN A GENERATION OPPORTUNITY’? NARRATIVES ABOUT THE POTENTIAL IMPACT OF OHS HARMONISATION ON SMALLER FIRMS IN AUSTRALIA

ABSTRACT

Regulatory reform will see the introduction of harmonised Occupational Health and Safety laws across Australia. Here we consider the potential impact of this on smaller firms as the first step in assessing how they may adapt to this regulatory change. We use textual data consisting of recent media and blogs that highlight key stakeholders’ perceptions of the purpose and outcomes of harmonisation on smaller firms. The narratives perpetuate the negative discourse of regulation, not only for smaller firms, but for other key stakeholders. Critical analysis of stakeholders’ views of the effects of harmonisation articulates constraints and possibilities of regulatory change for smaller firms. Recommendations for ways in which smaller firms can be engaged and supported in this change are made.

INTRODUCTION

Smaller firms make important contributions to servicing and producing Australia’s economic growth, wealth, employment and innovation. Of the 2.05 million economically active firms, 40% have employees but only 1% of these employ more than 200 people (ABS, 2010). Smaller firms, like their larger counterparts face an array of regulation which is necessary for an advanced economy to function effectively (BRTF, 2005). But in Australia the constitutional divisions of responsibilities between federal and state governments makes regulation complex. The Council of Australian Governments (COAG) is intent on reducing this complexity through harmonisation of laws in 27 areas of activity.

One area of regulatory reform is occupational health and safety (OHS). Australia is striving to be a world leader in OHS practice (ILO, 2005). COAG’s intent is to harmonise OHS regulations across Australia. With a poor record of good OHS practice, harmonisation represents a ‘once in a generation’ opportunity for changes to OHS practice. Harmonisation will see OHS Acts enacted in all States to mirror a Model Act by 1 January 2012.

The purpose of this paper is to investigate what is being said about harmonisation particularly in relation to smaller firms. This paper prefaces an exploration of the actual effects on smaller firms once the legislation is enacted. In the next section, we look at the changing regulations of OHS in Australia. We then consider how smaller firms engage with, and their attitudes towards, regulation. In particular we outline a typology of smaller firms' attitudes to regulation. Using a narrative approach (Lawler, 2002; Mumby, 1987; Soderberg, 2006) we identify and analyse 'texts' drawn from current media and blogs, available in the public domain. In conclusion, we return to the typology to make recommendations for ways in which smaller firms can be engaged and supported in this change.

REGULATION AND OHS HARMONISATION

The purpose of regulation is to enhance and maintain an efficient market economy, while, at the same time, providing safeguards for workers, consumers, firms and the environment (BRTF, 2005). Much regulation does not have smaller firms as its focus and thus they are disproportionately affected by regulatory regimes and in some circumstances they bear regulatory costs which are at least 35% higher than larger firms (Chittenden, Kauser, & Poutziouris, 2002). Regulatory costs can be incurred from complying with policy or through the administration of the policy (Storey & Greene, 2010). In the UK it has been calculated that OHS regulations compliance costs are seven times higher for the smallest firms compared to the largest ones (£111.59 per employee compared to £15.99) (Lancaster, Ward, Talbot, & Brazier, 2003).

This cost burden contributes to viewing regulation negatively as 'red tape'. We saw this in 1996 when the Small Business Deregulation Task Force made over 60 recommendations to streamline and reduce the impact of regulation on smaller firms (Bell, 1996). The reform agenda agreed to by COAG in March 2008 (<http://www.coagreformcouncil.gov.au/>) is all about "cutting red tape to make it easier to do business" (Senator Nick Sherry, *AFR*, 10 Feb 2011). Reforms in 27 priority areas, one of which is OHS, are expected to deliver \$3.5 billion in annual gains to the economy (*AFR*, 10 Feb 2011). Moreover improved OHS performance is necessary, as the targets set by the National OHS Strategy 2002–12 (NOHSC, 2002) are far from being met.

Australian OHS regulations are based on the recommendations from the 1972 Robens Committee Inquiry on Safety and Health at Work. The essence is self-regulation by firms in

consultation with employees, setting goal-oriented responsibilities and duties. States are responsible for their own OHS laws inconsistencies in state-based approaches have resulted in complexity, particularly for firms operating across jurisdictions (COAG, July 2008). OHS harmonisation will occur through the states enacting into legislation the Model OHS Act by 1 Jan 2012. This will be supplemented by national Regulations and Codes of Practice. The management and enforcement of these Acts, Regulations and Codes will remain with the state-based agencies and overseen by the federal agency (SafeWork Australia, 2010).

Underpinned by the 'duty of care' concept, the Model Act requires employers to identify and implement appropriate measures to ensure a safe system of work and requires employees to follow that system. It allows workers to stop work if they are exposed to a serious risk, while OHS representatives are able to direct workers to stop work if exposed to a potential risk. Employers are required to exhibit due diligence in all activities including: identifying the risks and hazards in the nature of their operations; examining their resources and processes to ensure a safe system of work is in place; having a knowledge of OHS matters; having practices that facilitate a timely response to incidents and a process that enables full legal compliance (SafeWork Australia, 2010).

The impact of harmonisation will be felt differently across jurisdictions but will reduce complexity for firms operating in multiple jurisdictions. However, smaller firms are less likely to operate in multiple states, and Access Economics (2011) predicts that the changes they will be required to make will not be offset by reduced complexity. In order to contextualise the data we collate and analyse, we need to consider what the literature tells us about smaller firms and their responses to regulation generally and OHS specifically.

Smaller Firms, Regulation and OHS

Smaller firms' responses to regulation depend on a complex interaction of cultural, contextual and economic factors in concert with owner-managers' responses as well those of employees and other stakeholders (Barrett & Mayson 2008; Barrett & Rainnie, 2002; Mayson & Barrett, 2006; Wilkinson, 1999). Regulation may constrain smaller firm's activity through compliance, but could also enable and motivate other activity by making certain actions possible or by encouraging certain activity in others (Kitching, 2006; 2010). The conclusion from Anyadike-Danes, Athayde, Blackburn, Hart,

Kitching, Smallbone, & Wilson's (2008: iii) study of 1205 smaller firms concluded that "knowledge of regulation, coupled with internal capacity to respond positively can and does enable business owners to adapt business practices and products to overcome some of the constraining influences of regulation".

Why then is regulation seen as red tape? Perhaps, because smaller firms are structurally vulnerable in the face of regulatory compliance. Resource poverty gives rise to "structures of vulnerability" (Nichols, 1997: 161). With OHS, poor performance has been shown to be "related more to the inadequate management of risk than to the absolute seriousness of the hazards faced" (Baldock James, Smallbone, & Vickers, 2006: 829). Documentation of risk is problematic (Eakin, Champoux, MacEachen, 2010) in smaller firms whose management systems generally lack formality, and as Barrett and Mayson (2008; Mayson & Barrett, 2006) have established, this is particularly so in regard to managing the employment relationship. Smaller firms are less likely to employ OHS practitioners (Pilkington, Graham, Cowie, Mulholland, Dempsey, Melrose, & Hutchinson, 2002) and they are less likely to be inspected by regulatory agents than larger firms. A lack of resources, expertise and formality may impact on OHS performance. For example, worker participation is critical to improving OHS outcomes and research shows a positive relationship between the presence of representative participation and improved OHS management practices (Bohle & Quinlan, 2000; Quinlan & Johnson, 2009). Yet in smaller firms there is less likelihood that relevant infrastructure such as employee training and union organisation will exist to make participation effective (Bohle & Quinlan, 2000; Frick & Walters, 1998; Walters, 2001).

A useful framework for analysing smaller firms potential responses to OHS regulation was developed by Vickers, James, Smallbone, & Baldock (2005) in a study of regulation with 1087 UK smaller firms. 'Avoiders/Outsiders' are likely to be non-compliant and keep a low profile so as not to attract attention. Those with little to fear from losing business as a result of regulatory intervention or who are unconcerned about adverse publicity if they are in breach (Baldock et al, 2006; Nichols, 1997; Walters, 2001) are likely to be this type. 'Minimalists' view regulations as an unnecessary burden, are suspicious of external agencies and employ 'short cuts' and/or dishonest measures. Their behaviour may be encouraged by being difficult for regulatory agents to reach and they are therefore less likely

to be influenced by traditional regulation methods (Baldock et al, 2006; Walters, 2001). ‘Positive Responders’ use external agencies, such as customers and inspectors to ensure they are compliant with regulations, and are tolerant of regulatory intervention as long as it is accompanied by clear guidelines (Baldock et al, 2006). However problems can arise here because of the multiple agencies that operate in the OHS space, which Rigby and Lawlor (2001) found confused owner-managers who were unsure of their differences and what they were required to do in order to comply. Indeed Lord Young’s (2010) review of the UK’s 1974 *Health and Safety at Work etc Act* shows firms operating in “a climate of fear” (p.11), which led to *over-compliance* and excessive costs for firms. The final type, ‘Proactive Learners’, have a sound awareness of regulation which is supported by workplace policy and practice. Anyadike-Danes, et al (2008) found complementary policy measures have the potential to enhance business performance in response to regulation and so it could be expected that within this category of smaller firms there is some positive impact of regulation on performance.

In summary, when the literatures on small firms, regulation and OHS are brought together, there are questions about how smaller firms might adapt to OHS harmonisation. Vickers, et al’s (2005) typology provides a framework for analysing how smaller firms may respond and we return to this in light of the narratives of key stakeholders around harmonisation.

STAKEHOLDER NARRATIVES ON OHS HARMONISATION

The purpose of this paper is to investigate what stakeholders in the safety and smaller firm worlds are saying about the possible effects of the harmonised OHS regulations on smaller firms. Collecting and analysing this data provides a benchmark against which actual effects in and on smaller firms can be assessed. The data collected includes recent media stories and blogs that highlight key stakeholders’ perceptions of the purpose and outcomes of harmonisation on smaller firms. We chose to look at this data using the concept of narrative. Narratives are “stories” through which social actors make sense of their social experience (Lawler, 2002; Mumby, 1987; Soderberg, 2006). However, they are not simply random stories built around factual accounts of a particular event or series of events, instead narratives are “social products” embedded in social, historical, cultural and we would add political locations in society (Lawler, 2002: 242). Social and political narratives have an identifiable ‘voice’ and work in the interests of particular perspectives (Soberberg, 2006).

We identify key stakeholders in the harmonisation debate as the regulators, i.e. the federal government and its agencies concerned with OHS legislation and outcomes; business which includes employers and their representatives; safety practitioners and/or professionals in the safety industry; and smaller firm owner-managers and their representatives. Our convenience sample (Tharenou, Donohue, & Cooper, 2007) of media and blogs has been selected to represent the various views of these stakeholder groups. We used content analysis (Tharenou et al, 2007) to organise the textual data into general themes in relation to the views of each stakeholder group. We look for frequently occurring statements and ‘common sense’ associations indicating mutually reinforcing assumptions and ideas about the effects of harmonisation on smaller firms. In addition we checked for what was not said, the silences and the untested assumptions evident in the texts (Potter & Wetherell, 1987). The examples of stakeholder narratives presented below represent key themes identified across the various ‘texts’ surveyed for this paper.

Stakeholders’ narratives on OHS harmonisation

Regulators: Regulators have had considerable opportunity to comment on harmonisation and the shape and nature of the Model Act. As Worksafe Victoria’s principal lawyer, Kate Despot, has stated in relation to harmonisation, “we want the best possible outcome to improve workplace safety” (*OHS Professional*, March 2011). As part of the harmonisation process a regulatory impact statement (RIS) was prepared in line with COAG guidelines. The RIS listed seven areas where firms are likely to face considerable changes and these were reported in *Monitor* (March, 2011). These include apparently general business processes such as: “requirements for Regulated Current Devices (RCDs) to be installed in certain circumstances; requirements for an annual notice of plant maintenance and annual fees; the definition of “notifiable incident” for major hazard facilities; requirements associated with asbestos management and control” for example (*Monitor*, March 2011). These business processes are only pertinent to some firms but the guidelines tend to take a one-size-fits-all view, ignoring the diversity of firms and suggesting that RCDs are installed in all firms regardless of size. The model firm implied by the RIS appears to be larger and well resourced with formal safety systems in place. This narrative of the regulators is problematic, not only in setting the agenda for identifying possible

regulatory impacts on firms, but also in framing the ‘problems’, barriers and outcomes of harmonisation.

While WorkSafe Victoria has stated that “many owners and directors of medium-sized organisations are unaware of the link between safety performance and premiums, [they] do not understand the value of employing qualified OHS professionals, and believe standard safety management systems are too complex” (*OHS Alert*, 23 March 2011, www.ohsalert.com.au), the regulators appear to be silent on the impact on smaller firms. We see this clearly in a comment made by Julia Collins, Director of the model legislation project at SafeWork Australia. When she was asked about the impact on smaller firms she merely stated that “ultimately, harmonisation will allow businesses working across borders to put the time and effort that they otherwise would have spent familiarising themselves and complying with different requirements into improving their work health and safety management systems and practices” (Donaldson, March 2011).

A key element in the regulators’ narrative is that the “best possible outcome[s]” from harmonisation will flow smoothly and evenly across firms. While WorkSafe Victoria acknowledged the different circumstances of smaller firms, they note that smaller firms “do not understand” the benefits of harmonisation and are reluctant to employ specialist OHS staff are therefore recalcitrant and as such fail to realise beneficial outcomes from harmonisation.

In summary, safety regulators engage in a narrative of benefits of harmonisation for “all firms”. The focus is on larger, formalised and well-resourced firms that are better able to respond to regulatory change. Absent in this narrative is the diversity of firms, particularly smaller firms that are problematised in terms of regulatory compliance.

OHS Practitioners and/or Professionals

At the Safety in Action conference held for OHS professionals in Melbourne in February 2011, ComOps¹ conducted a survey of more than 170 OHS and Risk Managers, CEOs and other senior executives to determine the top OHS issues facing Australian firms. Of the respondents, 77% were concerned about the impact of OHS harmonisation (www.DynamicBusiness.com.au). Concern has also been expressed by academic and legal professionals: Professor Richard Johnstone (Griffith

¹ ComOps is a cloud computing software company, which provides ERP business solutions.

University Law School) and Michael Tooma (Norton Rose Lawyers) have criticised the Model Act of not shedding “any further light” on consultation obligations and lacking guidance on how employers can comply with their due diligence obligations (*OHS Alert*, 24 March, 2011, www.ohsalert.com.au). The Model Act places a greater emphasis on duty of care provisions, however as VECCI (Nov 2009, www.vecci.org.au) has noted, “For managers the key will be to prove that you have undertaken due diligence in relation to OHS, but what is due diligence?” A lot of paperwork is the opinion of lawyer Andrew Douglas. For smartcompany.com.au he wrote “There is a sizeable increase in paperwork compliance required, and as a result of the ‘due diligence’ duties to be imposed on company officers, there will need to a significant improvement in both practice and paperwork reporting to the board and relevant officers of the business” (1 March 2011).

This narrative largely universalises businesses as a homogeneous group similarly affected by the provisions of the regulation. These narratives are similar to, and consistent with, the regulators’ narratives that assume a ‘one-size-fits-all’ view of harmonisation where the large firm norm is assumed. Smaller firms are largely invisible, or if they are visible, they are viewed as outside the norm and therefore problematic. In general smaller firms are absent from this narrative as the interests of “business” (i.e. larger firms) take centre stage in the debates.

Business

Clearly heard amongst the voices representing business interests is the concern about the likely increased documentation requirements of the OHS regulations. Access Economics (2009) report that these requirements include: providing management and staff time to fill in forms and assist with audits; recruiting and training additional staff, where needed to meet compliance burdens; purchasing and maintaining reporting and information technology systems; obtaining advice from external sources (such as accountants and lawyers) to assist with compliance; and obtaining licences and/or attending courses to meet regulatory requirements. Concerns about paperwork underpin the ‘scare campaign’ the ACTU accuses the business ‘lobby’ of running (Kearney, ACTU Media Release, 13 April 2011 actu.org.au/media/mediareleases...).

Despite Access Economics (2009:23) noting that “Smaller companies are disproportionately hit as a result of a smaller revenue base to spread costs, no in-house regulatory team, relatively less

time to keep abreast of regulatory developments and heightened concern of penalties for non-compliance”, all we hear is that ‘things’ must be done to “give SMEs practical ability to understand legal obligations and what compliance requires” (Peter Anderson, ACCI, 21 April 2011, www.acci.asn.au). Because of the one-size-fits-all narrative it is not apparent what these ‘things’ are and it is therefore difficult to gauge the effects of harmonisation on smaller firms.

Smaller Firms

The SafetyatWork blog (www.safetyatworkblog.com.au) is one place where we find a smaller firm narrative. One blogger noted, “Occupational health and safety compliance has never been a friend to small business. OHS cannot be implemented “on the cheap” and has always been a business cost. In some small businesses depending on the type of industry, compliance costs are a more significant part of the operating budget than in others but OHS applies equally across all workplaces regardless of these variations. This situation has often been described as unfair but the alternative is a two-tier compliance system that is likely to be very difficult to implement and enforce” (SafetyatWork Blog, 2 March, 2011).

No mention is made of the opportunity to increase safety in the workplace whereas the costs are said to arise from “...cross referencing the new sections in policies and procedures will be a significant task that will require significant resources and be a source of distraction for health and safety personnel who should be focussed on the hazards and risks in business” (SafetyatWork Blog, 2 March, 2011). As another wrote, “These changes aren’t going to simplify things... If I thought there’d be a cost benefit out of these changes I’d be right behind them” (SafetyatWork Blog, 4 March, 2011).

There has been a resounding silence in these blogs about the benefits of the harmonisation process. This surprised one blogger who, when commenting on a story about harmonisation increasing the costs to business, said “Wow, I really hadn’t considered harmonisation to be a bad thing” (Safety at Work Blog, 2 May 2011). He went on to say, “There are complaints that small business will not improve through legislation. In reality SMEs do whatever seems natural and will comply as much as someone tells them they have to” (Safety at Work Blog, 2 May 2011).

In summary, the key theme emerging from the narratives is one-size-fits-all despite the diversity of context and needs of smaller firms. Concerns about costs dominate professionals’ and

business narratives and although smaller firms are encompassed in this, they are not differentiated. In the regulators' narrative smaller firms are viewed as recalcitrant and while their different needs are acknowledged by stakeholders, they are themselves marginal to the overall narrative.

DISCUSSION

Vickers et al's (2006) typology of small firms' responses to OHS regulation can be used to speculate about the political and practical outcomes of these narrative themes - "one-size-fits all" application of regulation, universal nature of regulatory effects and the absence of a smaller firm 'voice' - in these narratives. 'Avoiders/Outsiders' are likely to be non-compliant and keep a low profile so as not to attract attention. Perhaps an argument can be made that if smaller firms are unable to locate themselves and their interests in the dominant narratives of OHS harmonisation, that their guide to action will be that of the avoiders/outside with respect to compliance. In particular if smaller firms see only costs and no benefits from harmonisation they may see little use in being concerned with compliance.

'Minimal Reactors' view regulations as an unnecessary burden, are suspicious of external agencies and employ 'short cuts' and/or dishonest measures. Their behaviour may be encouraged by being difficult for regulatory agents to reach and they are therefore less likely to be influenced by traditional regulation methods. From the narratives this would appear to be an option for some smaller firms. Additionally, difficulty in interpreting regulation in the specific smaller firm's context could also lead to minimalism.

'Positive Responders' use external agencies to ensure compliance with regulations and tolerate regulatory change which is accompanied by clear guidelines. In light of concerns by smaller firms about support for regulatory compliance, and views expressed through regulators' narratives that it is up to smaller firms to employ specialists, such a response is ruled out. This may point to the need for the regulatory authorities to consider relevant and appropriate ways to support smaller firms in their compliance efforts.

'Proactive Learners' have a sound awareness of regulation which is supported by workplace policy and practice. It seems that if regulators want the best possible outcomes from harmonisation then smaller firm learning needs to be engendered with the support of business stakeholders and the

regulatory authorities. Such support could be established by having a better understanding of the diverse needs and contexts of smaller firms rather than clinging to a one-size-fits-all approach to regulation that problematises smaller firm diversity.

CONCLUSION

The purpose of this paper was investigating what key stakeholders were saying about OHS harmonisation in terms effects for smaller firms. We have done this as a precursor to finding out how smaller firms adapt once harmonisation becomes a reality. We collated and analysed ‘textual data’ of recent media and blogs and highlight themes from key stakeholders’ narratives about harmonisation. We employ the typology developed by Vickers’ et al (2005) of smaller firm owner-manager attitudes and responses to regulatory changes to speculate on, given the narratives, the potential responses of smaller firms. Avoidance or minimalism is what we see as likely as the silence in these narratives is around the benefits of harmonisation and the opportunity it affords smaller firms to increase workplace safety and improve their safety and ultimately their economic performance. Given that the purpose of harmonisation is to create a level playing field for safety regulation, it is not surprising that a “one-size-fits-all” narrative dominates stakeholders’ views. The effect of this is that there was little acknowledgement of structural issues related to firm size, beyond the occasional reminder that ‘smaller firms are different’. A one-size-fits-all approach was evident in the regulators’ narrative with the smaller firms subsumed in the dominant voice of big business. The participation of smaller firms and representation of their interests in the dominant narratives of regulators, professionals and business was marginal. While we can speculate on how smaller firms may adapt there is clearly an urgent need to understand what benefits and costs to smaller firms that the regulatory change of the OHS harmonisation process in Australia will incur.

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