Protecting Workers from Adverse Supply Chain Effects – The Australian Legislative Example

by Phil James

Commercial supply relations between the purchasers and providers of goods and services have always constituted an important component of capitalist economies. Over the last three decades or so, however, such relationships have taken on a growing (and, in historical terms, renewed) significance as large public and private sector organisations have chosen to place a greater emphasis on management by 'contracting' rather than through 'internal hierarchies'.

Available evidence indicates that such supply relationships have varying implications for employment conditions within immediate and lower tier supplier organisations. At the same time, it suggests that, at the aggregate level, they have made an important contribution to the deteriorations in employment conditions which have occurred within developed economies over the last thirty years.

This suggestion furthermore receives strong support from an important recent book by the North American academic David Weil (2011). In this the author draws attention to how the shift towards externalisation has led to the creation of 'fissured' employment relationships in a number of industries with large concentrations of low paid workers. That is ones in which powerful lead firms shape the product market conditions, while to a large extent being separated from the employment of the workers who produce the goods and services for them. He further argues that these arrangements have in turn led to the direct (supplier) employers of workers operating in far more competitive environments and facing consequent pressures to both reduce terms and conditions, ignore laid down employment standards.

Against this backcloth, international research indicates only too clearly how the trend towards outsourcing has had adverse implications for standards of occupational health and safety (OHS). A considerable body of evidence, for example, highlights how the types of work changes commonly flowing from supply chain pressures, such as greater job insecurity, poorer pay and less control over working time, are linked to a variety of adverse health and health-related outcomes, including increased incidence of cardiovascular disease, burnout and depression. Meanwhile, more widely, a 2008 review of 25 studies found poorer OHS outcomes evidenced in all but two of them.

The presence of powerful supply chain actors within the type of fissured employment arrangements referred to by Weil, however, points to the fact that such outcomes are far from inevitable. For if they have the capacity to create the conditions giving rise to them, it follows that they also are potentially capable of combating them. This argument moreover takes on added weight given the way in which such actors, as Weil also points out, frequently already interfere in the internal management of their suppliers. For example, through the establishment of demanding quality

standards and associated monitoring systems aimed at ensuring that price reductions are not secured at the cost of damage to their brand image.

The arguments that have long been advanced to support regulatory initiatives to protect those labouring at the end of global supply chains in developing economies are therefore equally applicable to developed countries. Indeed, while the international regulation of supply chains extending to developing countries may be informed by a stronger moral imperative, regulatory action at the level of the (developed) national state must be viewed as being more practically viable. Certainly, there is no question that existing regulatory infrastructures for OHS internationally are generally insufficient to address the adverse effects of supply chains because of their continued focus on the responsibilities of employers towards their own employees. It is consequently similarly clear that they need to be reformed to address them.

While the reforms required will vary from country to country, the innovative provisions of Australia's harmonised Work Health and Safety Act (WSA) are argued to form an important point of reference for policy-makers and campaigners. Adopted in 2010 at the federal level and subsequently adopted in all of the country's jurisdictions with the exception of Victoria and Western Australia, this places the primary duty of care on a person in control of a business or undertaking (PCBU), rather than the employer (Johnstone, 2011; Harpur and James, 2014). In addition, it defines a 'worker' (to whom this duty is owed) as including those who carry 'out work in any capacity for a person conducting a business or undertaking, including work as—
(a) An employee; or
(b) A contractor or subcontractor; or
(c) An employee of a contractor or subcontractor; or
(d) An employee of a labor hire company who has been assigned to work in the person's business or undertaking; or
(e) An outworker;
(f) An apprentice or trainee; or
(g) A student gaining work experience; or
(h) A volunteer; or
(i) A person of a prescribed class.'

Furthermore, when considering what constitutes a business or undertaking for the purposes of the statutes, a court is required to take into account all workers, as defined above, that are 'engaged or caused to be engaged' by the PCBU as well as those 'whose activities in carrying out work are influenced or directed' by it.

Taken together, then, these provisions serve to put in place a widely based system of supply chain regulation through the duty of care imposed on a PCBU. Moreover, this feature is reinforced by the requirement under section 46 of the Act that 'if more than one person has the same duty concurrently under the Act, each person with the duty must, so far as reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter'. It is further reinforced by the fact that a PCBU, by virtue of section 47(1), is obliged, so far as is reasonably practicable', to consult with workers (or their health and safety representatives) who carry out work for the business or undertaking that are, or are likely to be, directly affected by a workplace health and safety matter. A provision that therefore significantly acts to provide consultation rights to non-employees and their representatives.

Of course, these provisions have been drafted in the context of the Australian legal system. However, there is no reason why their broad thrust cannot be incorporated into other national legal systems and pursued at the level of the European Union. There is also no doubt that reforms of this

type are needed in order to afford greater protection to workers from the harmful effects of the commercial pressures within many supply chains.

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2) The supply chain for a brewery would include raw ingredients such as hops and barley but not the manufactured goods such as bottles and cans. Answer: FALSE. 3) When using the low-cost strategy for supply chain management, a firm should use buffer stocks to ensure speedy supply. Answer: FALSE. 4) Savings in the supply chain exert more leverage as the firm's net profit margin decreases. Answer: TRUE. 5) A firm that employs a response strategy should minimize inventory throughout the supply chain. Answer: FALSE. 6) Supply chain decisions are not generally strategic in nature, because purc Workers at the plant were scared. Several employees had already tested positive and the company, Case Farms â€“ which has been repeatedly condemned for animal treatment and workersâ€™ rights violations â€“ was not providing proper protective equipment. â€œWe donâ€™t have a lot of space at work. We are shoulder to shoulder,â€ said one worker, who declined to be identified, during a recent union call. â€œIâ€™m afraid to go to work, but I have to go.â€ The testing turned up 150 positive cases at the facility, the worker said. On 8 June, the health department for Burke county, where the Case Farms facility is loc