

**Centre for Employment and Labour Relations Law**

**The University of Melbourne**

**June 2018**

**Student Working Paper No. 24**

**SLAUGHTERHOUSE BLUES: AN INDUSTRY IN BREACH OF VICTORIAN  
OCCUPATIONAL HEALTH AND SAFETY LAWS?**

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ISSN 1837-1418

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# SLAUGHTERHOUSE BLUES: AN INDUSTRY IN BREACH OF VICTORIAN OCCUPATIONAL HEALTH AND SAFETY LAWS?

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## I INTRODUCTION

‘...men who have to crack the heads of animals all day seem to get into the habit, and to practice on their friends, and even on their families, between times...’<sup>1</sup>

Slaughterhouses have become integral to modern human civilisation. They continue to increase in number and importance as the global demand for cheap meat surges. Their activities are largely concealed, obscuring the connection between slaughterhouses and packaged meat, and shifting the burden of the modern dependence on meat onto a small group of people: slaughterhouse workers. These slaughterhouse workers, in Australia and elsewhere, face not only the revulsion of the majority meat-eating population, but the physiological and mental externalities of their work. In particular, ‘stickers’, the workers tasked with the actual killing of the animals, are prone to severe harms due to the physical intensity, material risks and high emotional toll of their work.

The contentions of this article are twofold. First, it is argued that Victorian stickers, as a result of the nature of their work, are subject to significant psychological harms. These harms are discussed in Part II, using both studies and anecdotal evidence. Second, that as a result of the abovementioned harms, Victorian slaughterhouses operating at or below industry standards may be in violation of occupational health and safety (OHS) law. Part III of this article suggests measures by which harm to workers could be reduced. An argument is developed that such measures are ‘reasonably practicable’ for the purposes of the relevant legislation, and that by failing to implement them slaughterhouses derogate from their primary duty to employees, which is set out in s 21(1) of the *Occupational Health and Safety Act 2004* (Vic) (“OHS Act”). This is followed by a conclusion in Part IV.

For the sake of clarity, certain terms must be defined. ‘Slaughterhouse’ throughout this article refers to any facility that conducts the slaughter of animals for commercial consumption, in accordance with the relevant industry standards.<sup>2</sup> It is assumed that slaughterhouse is synonymous with ‘abattoir’. Any reference to slaughterhouses in Part III of this article is a reference to Victorian slaughterhouses. ‘Sticklers’ (also called ‘slaughtermen’) are those responsible for cutting the animal with a knife, in order to kill it and cause its blood to drain out of its body. Note that while this article’s focus is largely narrowed to the psychological harms borne by stickers, many of this article’s conclusions drawn in relation to stickers may also be drawn in relation to slaughterhouse workers generally. Finally, while different levels of management face slight

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<sup>1</sup> Upton Sinclair, *The Jungle* (Doubleday, 1906), 20.

<sup>2</sup> See: CSIRO, *Australian Standard for the Hygienic Production and Transport of Meat and Meat Products for Human Consumption* (CSIRO Publishing, 2007).

differences in OHS culpability, reference in this article to ‘employer’ is a broad reference to those companies or individuals to whom s 21(1) of the OHS Act applies.

## II PSYCHOLOGICAL HARM IN THE SLAUGHTERHOUSE

‘Down in the blood pit they say that the smell of blood makes you aggressive. And it does. You get an attitude that if that hog kicks at me, I’m going to get even. You’re already going to kill the hog, but that’s not enough. It has to suffer. When you get a live one you think, oh good, I’m going to beat this sucker.’<sup>3</sup>

There are almost 80 slaughterhouses in Victoria, each slaughtering up to three animals per second.<sup>4</sup> Slaughterhouse workers experience mass violence and death daily, by witnessing and partaking in the deaths of thousands of animals each week. In recent years the pace of slaughter has increased due to technological advances and increases in demand, further intensifying the atmosphere for those working on the killing line.

This Part utilises various sources of evidence from the United States (US). It is worth briefly stating why such studies can be applied to the experience of Australian slaughterhouse workers. In the US, the Humane Slaughter Act (1978) prescribes the method of slaughter for the US meat industry (stated at 7 USCS § 1902). Fundamentally, this method consists of walking the animal into a restraining box, in which it is stunned.<sup>5</sup> This is followed by ‘sticking’, where the animal’s throat is cut, causing rapid blood loss and death.<sup>6</sup> The animal is often shackled and ‘hoisted’ (hung from a moving rail) before sticking occurs, both for sanitary reasons and to speed up blood drainage. The Australian slaughter method, set out in the *Australian Standard for the Hygienic Production and Transport of Meat and Meat Products for Human Consumption*, is almost identical to that prescribed for the US. Consequently, the evidence of harms suffered by stickers as identified in US studies can be applied to Victorian stickers, who would largely be exposed to the same psychological and physical harms.

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<sup>3</sup> Gail A Eisnitz, *Slaughterhouse: The Shocking Story of Greed, Neglect, and Inhumane Treatment Inside the U.S. Meat Industry* (Prometheus Books, 1997), 92.

<sup>4</sup> Aussie Abattoirs, *Overview*, at <<http://www.aussieabattoirs.com/facts/directory>> (accessed 7 March 2018); Nik Taylor, *Distanced from death: animal cruelty at the abattoir*, at <<http://www.abc.net.au/news/2013-03-22/taylor-managing-death/4588016>> (accessed 7 March 2018).

<sup>5</sup> Methods include the use of firearms, captive bolt stunners, CO2 and electrocution.

<sup>6</sup> This is also called ‘exsanguination’.

There are various kinds of harms endemic to the animal slaughter industry, including exposure to diseases and illnesses, routinely unsatisfactory employment conditions, psychological harm and physical injury.<sup>7</sup> Nevertheless, the focus of this article is confined to the psychological harms prevalent among stickers.

On the balance of the available evidence, the connection between slaughterhouse work and psychological harms is convincing. Significant studies and anecdotal evidence, discussed below, support the notion that slaughterhouse work is psychologically harmful. Nonetheless, the area deserves further research, with a view to creating policy to improve the situation. There appear to be two main categories of psychological harm suffered by slaughterhouse workers: (i) Perpetration-Induced Traumatic Stress; and (ii) an increased tendency towards violence.

### *A Perpetration-Induced Traumatic Stress*

In the early 2000s, psychologist Rachel M MacNair conceived the term Perpetration-Induced Traumatic Stress (PITS), a form of post-traumatic stress disorder (PTSD) that may result from the action of killing or creating an otherwise traumatic situation.<sup>8</sup> MacNair has theorised that slaughterhouse workers may be susceptible to PITS.<sup>9</sup> According to MacNair, the human mind is ‘not well suited for killing’, and symptoms of PITS include drug and alcohol abuse, depression, anxiety, paranoia, dissociation and amnesia.<sup>10</sup>

These symptoms are well documented in the anecdotal evidence. Virgil Butler, a long-term employee at a chicken slaughterhouse, became ‘emotionally shut down’ and ‘psychologically disturbed’, while many of his co-workers turned to drugs to deal with their acquired trauma.<sup>11</sup> Butler also experienced nightmares featuring chickens, noting that one of his fellow workers was ‘hailed off to the mental hospital’ for the same.<sup>12</sup>

Timothy Pachirat, an undercover investigator who spent five months working in a Nebraska slaughterhouse, writes how the nature of the work left co-workers feeling guilty, shaken and ashamed.<sup>13</sup> Pachirat, who

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<sup>7</sup> Jennifer Dillard, ‘A Slaughterhouse Nightmare: Psychological Harm Suffered by Slaughterhouse Employees and the Possibility of Redress through Legal Reform’ (2007) 15(2) *Georgetown Journal on Poverty Law & Policy* 391.

<sup>8</sup> Rachel M MacNair, *Perpetration-Induced Traumatic Stress: The Psychological Consequences Of Killing* (Greenwood Publishing, 2002).

<sup>9</sup> *Ibid* 88.

<sup>10</sup> *Ibid* 170.

<sup>11</sup> Virgil Butler, *Inside the Mind of a Killer*, at <<http://cyberactivist.blogspot.com/2003/08/inside-mind-of-killer.html>> (accessed 7 March 2018).

<sup>12</sup> *Ibid*.

<sup>13</sup> B R Myers, *Slaughterhouse Rules*, at <<https://www.theatlantic.com/magazine/archive/2012/11/slaughterhouse-rules/309113/>> (accessed 7 March 2018).

eventually found himself engaged in killing cattle, was warned against it by a colleague, who reasoned: ‘Because, man, that’s killing ... that shit will fuck you up for real’.<sup>14</sup>

In Gail Eisnitz’s book *Slaughterhouse*<sup>15</sup>, she documents interviews with former hog-stickers from a slaughterhouse in Iowa. One former sticker stated that ‘[a] lot of [the hog-stickers] have problems with alcohol. They have to drink, they have no other way of dealing with killing live, kicking animals all day long. If you stop and think about it, you’re killing several thousand beings a day’.<sup>16</sup> Another former sticker described the dissonance between recognising the sentience and moral worth of the pigs, yet as a coping-mechanism being unable to ‘care’ about the animal once the time came to kill them.<sup>17</sup> This latter account closely matches the kind of dissociation experienced by sufferers of PITS (or ‘doubling’), as documented by MacNair.<sup>18</sup>

The above suggests that slaughterhouse workers and stickers in particular are predisposed to psychological harm, which even if not strictly PITS is likely to have a severely adverse psychological impact on the workers.

### *B Increased tendency towards violence*

In her 2009 study, Amy Fitzgerald, an Associate Professor of Criminology at the University of Windsor in Canada, found a strong correlation between slaughterhouse worker populations and higher rates of violent crime, while controlling for the effects of ‘manufacturing’ industries generally.<sup>19</sup> Fitzgerald hypothesises that the reason for this causal increase in violent crime is a ‘spillover’ in the mentalities of the slaughterhouse workers, due to a violent predisposition developed from participating in the routinised slaughter of animals.<sup>20</sup>

Fitzgerald’s study should be read in conjunction with research that postulates that human-animal abuse is connected to human-human violence.<sup>21</sup> Other studies have concluded that this disposition is unlikely to be

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<sup>14</sup> Ibid.

<sup>15</sup> Eisnitz, above n 3.

<sup>16</sup> Ibid 88.

<sup>17</sup> Ibid 87.

<sup>18</sup> Dillard, above n 7, 7.

<sup>19</sup> Amy J Fitzgerald, Linda Kalof and Thomas Dietz, ‘Slaughterhouses and Increased Crime Rates: An Empirical Analysis of the Spillover From ‘The Jungle’ Into the Surrounding Community’ (2009) 22 *Organization & Environment* 158.

<sup>20</sup> Ibid.

<sup>21</sup> Piers Beirn, ‘From Animal Abuse to Interhuman Violence? A Critical Review of the Progression Thesis’ (2004) 12(1) *Society and Animals* 39.

pre-existing, but rather is created through a process of desensitisation and trauma associated with working in the slaughterhouse. One such study proposes that the environment of factory farming lowers the ability of slaughterhouse workers to empathise with animal suffering, which in turn may lead workers to commit violent acts towards humans.<sup>22</sup> Some US courts have found that evidence of a criminal defendant having worked in a slaughterhouse is a relevant factor in indicating a propensity for violence.<sup>23</sup> A more recent Australian study, conducted by Emma Richards, Tania Signal and Nik Taylor of Flinders University, found that as a result of their occupation, people who work in slaughterhouses are more likely to commit violent acts against humans, to an extent analogous to incarcerated populations.<sup>24</sup>

### *C A compounded harm*

Refugee-humanitarian immigrants to Australia are often channelled into particular regional areas for settlement, whereupon they are given work that is ‘low-status, low-paid and often also unhealthy’.<sup>25</sup> Slaughterhouse work constitutes a large proportion of these ‘guaranteed’ jobs, due to the difficulty in attracting local labour to slaughterhouses.<sup>26</sup> Consequently, the psychological harms suffered by stickers are often compounded by their limited English and a lack of access to support resources.

## III AN INDUSTRY IN BREACH OF SECTION 21(1): THE PRIMARY DUTY

### *A What is the primary duty?*

Victorian occupational health and safety law is predominantly set out under the OHS Act. Section 21(1) of the OHS Act prescribes the ‘primary duty’ of employers under the regime, which requires employers to do

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<sup>22</sup> Dillard, above n 7, 7.

<sup>23</sup> Ibid 8.

<sup>24</sup> Richards, Emma, Nik Taylor and Tania Signal, ‘A Different Cut? Comparing Attitudes toward Animals and Propensity for Aggression within Two Primary Industry Cohorts—Farmers and Meatworkers’ (2014) 21 *Society and Animals* 395, 407.

<sup>25</sup> Graeme Hugo, ‘Immigrant Settlement Outside of Australia’s Capital Cities’ (2008) 14 *Population, Space and Place* 553, 553; Val Colic-Peisker and Farida Tilbury ‘Employment Niches for Recent Refugees: Segmented Labour Market in Twenty-first Century Australia’ (2006) 19(2) *Journal of Refugee Studies* 203, 203.

<sup>26</sup> Graeme Hugo, ‘Immigrant Settlement Outside of Australia’s Capital Cities’ (2008) 14 *Population, Space and Place* 553, at 563; Val Colic-Peisker and Farida Tilbury ‘Employment Niches for Recent Refugees: Segmented Labour Market in Twenty-first Century Australia’ (2006) 19(2) *Journal of Refugee Studies* 203, 205.

all that is ‘reasonably practicable’ to ensure the safety of their employees. Section 21(2) sets out a non-exhaustive list of events that constitute a contravention of the primary duty.<sup>27</sup> The relevant text of the primary duty is as follows.

(1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

Note that the existence of a working environment that is ‘safe and without risks to health’, for the purposes of s 21(1), is an objective question of fact and therefore must be determined empirically.<sup>28</sup>

The primary duty is an example of ‘principle-based’ regulation, where a regulatory outcome is sought by outlining a general duty that will change according to the relevant context.<sup>29</sup> Thus the content of the primary duty in the case of slaughterhouse workers will turn on the particularities of each job. In this case, the broad legislative goal sought is to strengthen the OHS Act so that every Victorian worker is ensured a workplace that is ‘healthy, safe and free from injury and illness’.<sup>30</sup> More specifically, in adopting this ambiguous phrasing, the primary duty can cover all kinds of workplaces and associated hazards, and may accommodate newly discovered risks without requiring amendments.<sup>31</sup>

Despite the ambiguity of s 21(1), s 20 offers some guidance as to what is expected of employers in satisfying their primary duty. Section 20(1) sets out that the fulfilment of s 21(1) requires the elimination of all risks if reasonably practicable and if not, the minimisation of those risks so far as reasonably practicable.

Moreover, pursuant to s 35(a) of the Acts Interpretation Act 1985 (Vic), the principles of health and safety protection, contained in s 4 of the OHS Act, should be briefly considered. The most relevant principle, contained in s 4(1), states that employees should be ‘given the highest level of protection against risks to their health and safety that is reasonably practicable’. This indicates that the primary duty should be construed as providing the highest level of protection to workers given the circumstances.

Finally, it is worth noting that the federal *Work Health and Safety Act 2011* (Cth) (“WHS Act”) is ‘heavily modelled’ on the OHS Act.<sup>32</sup> The standard of care enshrined in the primary duty of each of the Acts is the same, with the exception that the WHS Act duty’s purview is wider than that of the Victorian duty.<sup>33</sup> Given

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<sup>27</sup> These are referred to later in this article as examples of contraventions of s 21(1).

<sup>28</sup> *TTS Pty Ltd v Griffiths* (1991) 105 FLR 255, 267.

<sup>29</sup> Andrew Stewart et al, *Creighton & Stewart’s Labour Law* (The Federation Press, 2016), 549.

<sup>30</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 18 November 2004, at 1759-1765 (R Hulls, Minister for WorkCover).

<sup>31</sup> Cormack E Dunn and Sue Chennell, *Australian Master Work Health and Safety Guide* (CCH Australia Limited, 2<sup>nd</sup> ed, 2014), [5-030].

<sup>32</sup> LexisNexis, *Halsbury’s Laws of Australia* (24 February 2017) 455 Workplace Health and Safety, ‘(1) Introduction: Work Health and Safety’, [455-1000].

<sup>33</sup> Stewart et al, above n 29, 549.

the similarities between the two statutes, the following analysis will make use of case law and extrinsic materials pertaining to the WHS Act's articulation of the primary duty.

### B Defining 'reasonably practicable'

Much of the subsequent breach analysis turns on a sound understanding of the meaning of 'reasonably practicable', as interpreted by the courts and as intended by the legislature.<sup>34</sup>

While the OHS Act does not define reasonably practicable, s 20(2) provides a series of matters that must be considered when determining what is reasonably practicable in relation to ensuring health and safety:

- (a) the *likelihood* of the hazard or risk concerned eventuating;
- (b) the *degree of harm* that would result if the hazard or risk eventuated;
- (c) what the person concerned *knows*, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the *availability and suitability* of ways to eliminate or reduce the hazard or risk;
- (e) the *cost* of eliminating or reducing the hazard or risk.<sup>35</sup>

In the case of *Slivak v Lurgi*<sup>36</sup>, Gaudron J offered additional guidance as to the definition of reasonably practicable, observing that while the term should bear its ordinary meaning, three general propositions can be drawn from the case law:<sup>37</sup>

1. reasonably practicable is narrower than 'physically possible' or 'feasible';
2. what is reasonably practicable is to be assessed according to what was known at the relevant time; and
3. in determining what is reasonably practicable, one must balance 'the likelihood of the risk occurring against the cost, time and trouble necessary to avert that risk'.

While both Gaudron J's third proposition and s 20(2)(e) of the OHS Act refer to the cost of implementation, it is significant that the WHS Act expressly requires cost to be considered only after other matters have been 'weighed up',<sup>38</sup> and that cost is only relevant (ie prohibitive to implementation) to the extent that it is

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<sup>34</sup> The qualifier 'reasonably practicable' is a central element of the primary duty, as demonstrated by its prominence throughout ss 20 and 21.

<sup>35</sup> Emphasis added.

<sup>36</sup> *Slivak v Lurgi (Australia) Pty Ltd* (2001) 205 CLR 304; 177 ALR 585; [2001] HCA 6.

<sup>37</sup> *Ibid* [53].

<sup>38</sup> *Work Health and Safety Act 2011* (Cth) s 18(e).

‘grossly disproportionate to the risk’.<sup>39</sup> As a result, commentaries have observed that this same meaning and use of the ‘cost’ matter should be applied in the interpretation of the OHS Act.<sup>40</sup>

‘Grossly disproportionate’ is an opaque term that remains undefined in the Act, its extrinsic materials and relevant case law.<sup>41</sup> Nonetheless, two authorities appear to shed some light on the meaning of this term. First, despite there being no directly relevant case law, it may be helpful to consider authoritative discussions in the High Court of Australia (HCA) that speak to the definition of the same term, albeit in the context of whether legislation permissibly burdened the implied freedom of political communication. It is submitted that, at the very least, this HCA definition of grossly disproportionate should be consulted when interpreting the term for the purposes of the OHS Act. Most recently considered by the HCA in *Brown and Another v Tasmania*<sup>42</sup>, grossly disproportionate in that context is a law that goes ‘far beyond’ what is justified in the pursuit of the relevant purpose.<sup>43</sup> Applied to the present context, a grossly disproportionate cost is one which goes ‘far beyond’ the principles and objectives of the OHS Act; of providing employees with the highest level of protection against risks to their health and safety (see above). Second, the Guide to the Model Work Health and Safety Act (Guide), prepared in 2016 by Safe Work Australia, sets out that where the relevant risk is ‘particularly severe’ the employer will need to demonstrate that ‘costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively eliminate or minimise the risk’.<sup>44</sup> This appears to import, into the term grossly disproportionate, the notion that a measure will not be considered reasonably practicable where less costly measures that would have same effect on the risk are available.

### *C How might slaughterhouses be in breach of s 21(1)?*

Slaughterhouses will be in breach of s 21(1) if it can be established that they are not taking all ‘reasonably practicable’ measures necessary to secure a safe working environment. Harper J of the Supreme Court of Victoria stated that the duty can only be discharged by ‘taking an active, imaginative and flexible approach

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<sup>39</sup> Ibid.

<sup>40</sup> Dunn, above n 31, [5-130]; LexisNexis, above n 32, [455-1000].

<sup>41</sup> See: Explanatory Memorandum, Work Health and Safety Bill 2011 (Cth), at 15; Commonwealth, *Parliamentary Debates*, Senate, 31 October 2011, 7592 (J McLucas).

<sup>42</sup> (2017) 349 ALR 398; [2017] HCA 43.

<sup>43</sup> Ibid [290]. This definition was drawn from an earlier HCA case, *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1; 108 ALR 681; [1992] HCA 46 [728].

<sup>44</sup> Safe Work Australia, *Guide to the model Work Health and Safety Act*, at <<https://www.safeworkaustralia.gov.au/doc/guide-model-work-health-and-safety-act>> (accessed 7 March 2018).

to potential dangers'.<sup>45</sup> It may be assumed that some slaughterhouses are operating at, or below, the industry standard as described above in Part II of this article. Slaughterhouses operating at this level are, by implication, not pursuing means to mitigate the abovementioned harms that are analogous to the available and suitable suggested measures below. It is therefore argued that such slaughterhouses are not actively, imaginatively or flexibly pursuing avenues to mitigate the significant dangers of slaughterhouse work and are consequently in breach of the primary duty. This Part III C demonstrates that the apparent lack of industry undertakings in relation to such dangers, contrasted with the availability and suitability of reasonably practicable measures, may place certain slaughterhouses in breach of s 21(1). Some examples of such measures are provided below, in order to establish their 'availability' and 'suitability', pursuant to s 20(2)(d).

In particular, the examples of contraventions of the duty contained in ss 21(2)(a), (c) and (e) most closely depict how certain slaughterhouses may be contravening the primary duty:

- (2) ... an employer contravenes that subsection if the employer fails to do any of the following—
  - (a) provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health;
  - ...
  - (c) maintain, so far as is reasonably practicable, each workplace under the employer's management and control in a condition that is safe and without risks to health;

Each instance of prospective breach, emanating from a possible failure to act in accordance with the above examples from s 21(2), is explored separately below.

### 1 *Reasonably practicable: ss 21(2)(a) and (c)*

As established above, whether a workplace is 'safe and without risks to health' is an empirical consideration. Given that the balance of the evidence leans heavily in favour of stickers being subject to severe psychological harm as a result of the nature of their occupation, this definitional consideration is unlikely to be controversial. The main point of controversy for allegations of failing to act in accordance with ss 21(2)(a) and (c) is, despite the fact that slaughterhouses may not be safe and without risks to health, whether slaughterhouses are doing as much as is reasonably practicable to promote health and safety, in conformity with Harper J's abovementioned articulation of the primary duty.

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<sup>45</sup> *Holmes v RE Spence & Co* (1992) 5 VIR 119, 123-124.

In a broad consideration of ss 20(2)(a), (b) and (c), it can be seen that the psychological harms that might result for stickers are of a high ‘likelihood’ and ‘degree’, and therefore such harms ought to be well ‘known’ in the industry. Pursuant to s 20(2)(c), slaughterhouse employers should also be aware of methods of eliminating or reducing such psychological harms, given the significance of the risks to their workers. Considering s 20(2)(d), the ‘availability’ and ‘suitability’ of measures to eliminate or reduce the psychological harms is a relative unknown, given the dearth of published industry information regarding steps being taken to eliminate or reduce such health and safety risks.<sup>46</sup> Nonetheless, it must be concluded that the terms ‘available’ and ‘suitable’ should be interpreted broadly, to account for the high standard set by Harper J for the discharge of the primary duty. Therefore, in light of Harper J’s interpretation, the existence of a variety of moderate, sensible measures for slaughterhouses to mitigate some of the risks outlined in this article indicates that they are in fact ‘available’ and ‘suitable’ for the purposes of s 20(2)(d). Several examples of such measures are suggested below under ss 21(2)(a) and (c). The ‘cost’ element of s 20(2)(e) is discussed separately further below.

It does not appear possible to wholly eliminate the psychological risks to stickers without entirely removing the workers from the routinised slaughter of animals. While a positive outcome for health and safety, a replacement technology might render much of the animal slaughter industry financially non-viable, and is therefore unlikely to be considered reasonably practicable by a court. Consequently, in the below discussions of alleged failures to act in accordance with ss 21(2)(a) and (c), more moderate and reductionist measures are suggested.

## *2 Suggested measures: s 21(2)(a)*

Modern slaughterhouses operate using ‘disassembly lines’, which require stickers to directly partake in animal slaughter thousands of times every day, thereby placing them at significant risk of mental harms, as outlined above. This can be closely analogised to *NSW v Seedsman*<sup>47</sup>, where the HCA held that the NSW Police Service failed to provide a safe system of work in which the respondent was adequately protected from PTSD arising from exposure to severe child abuse.<sup>48</sup> Relevantly, in that case the HCA affirmed that

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<sup>46</sup> Psychological harm is not even mentioned as a safety risk in the industry health and safety manuals, such as the Agrifutures Beef Production WHS Plan. See: Agrifutures Australia, Work Health and Safety, at <<http://www.agrifutures.com.au/national-rural-issues/health-safety/pihsp-work-health-and-safety-manuals/>> (accessed 7 March 2018).

<sup>47</sup> *NSW v Seedsman* (2000) 217 ALR 583; [2000] NSWCA 119.

<sup>48</sup> *Ibid* 1. Although this case concerns the common law duty of care, the common law duty in is a pre-existing OHS duty that uses the same terminology as s 21(2)(a).

employers are subject to a duty to take reasonable precautions against the risk of mental or psychiatric injury, extending to the exercise of reasonable care to avoid the ‘unnecessary’ risk of injury to employees in the form of a recognisable psychiatric illness (such as PITS).<sup>49</sup> The HCA affirmed the trial judge’s finding that a risk is considered to be ‘unnecessary’ if by the adoption of some reasonable form of precaution or safeguard it could be eliminated or minimised.<sup>50</sup> Consequently, without significant mitigatory measures in place, the slaughterhouse modus operandi is not prima facie conducive to a ‘system of work’ that is safe and without risks to health, as required by s 21(2)(a).

Accordingly, the question arises of whether it is reasonably practicable, pursuant to s 20(2), for slaughterhouses to implement further measures towards creating a safe system of work. As discussed above, the matters in ss 20(2)(a), (b) and (c) appear to be satisfied in this regard. It is submitted that such further measures, including the below three examples, are also available and suitable for the purposes of s 20(2)(d), and are consequently reasonably practicable.

The first measure is to slow the rate of slaughter. Modern production rates, as discussed earlier, contribute to the psychological harms experienced by stickers. A reduced rate of slaughter may alleviate some of the risks faced by stickers, not only by reducing the sheer quantity of animals killed by them, but also by reducing any opportunity for the slaughterhouse systems to fail. The latter consequence is significant, as stressed and rushed workers are more likely to make mistakes, as often happens in slaughterhouses. For example, the stunning of animals is often not carried out properly.<sup>51</sup> Such mistakes, often leading to an increased level of suffering in the subject animals, can intensify the psychological harm suffered by slaughterhouse workers.

A second potential measure is improving the methods of stunning. As mentioned, the success rate of stunning, the object of which is to render the subject animal unconscious, is considerably substandard. Where stunning fails, the sticker must kill animals while they are still conscious, which can have significant psychological ramifications that are exacerbated if this occurs regularly. Stunning methods that have close to zero room for error could be explored and trialled by industry.

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<sup>49</sup> Ibid [18], [23].

<sup>50</sup> Ibid [15].

<sup>51</sup> A recent Animals Australia exposé showed pigs screaming and thrashing while being stunned and killed with CO<sub>2</sub> gas. See: Animals Australia, *If this is the 'best', what is the worst?*, at <<http://animalsaustralia.org/features/not-so-humane-slaughter/>> (accessed 7 March 2018). Another study found that out of 998 observed cattle, only 84.1% were adequately stunned. See: Lukas Jasiunas, *How Effective Is Captive Bolt Stunning?*, at <<https://faanalytics.org/effective-captive-bolt-stunning/>> (accessed 7 March 2018).

A third potential measure is for industry to make robust, sincere and transparent attempts to tackle the systematic animal abuse that occurs in slaughterhouses.<sup>52</sup> Such a measure might involve the installation of CCTV cameras in all areas of the slaughterhouse, with all footage to be audited by the RSPCA or another non-industry third party. It might also include the creation of an extensive industry anti-cruelty code for slaughterhouse workers, and the proactive penalisation of workers in breach of such a code. This measure could significantly alleviate the psychological harms faced by stickers, by reinforcing healthier empathy norms towards animals, which may in turn diminish the violent spillover described earlier. This measure may also reduce the likelihood of PITS in stickers, by reducing the opportunities to observe or partake in gratuitous animal abuse.

It appears that, for the purposes of s 21(2)(a), all elements of ss 20(2)(a)-(d) are satisfied in relation to the above suggested measures for slaughterhouses operating at or below the industry standard. The suggested measures are consequently reasonably practicable in relation to such slaughterhouses, pending the below consideration of the cost element in s 20(2)(e).

### 3 Suggested measures: s 21(2)(c)

S 21(2)(c) requires that employers maintain, so far as is reasonably practicable, a workplace that is safe and without risks to health, as distinct from a safe system of work discussed above.

In relation to stickers, slaughterhouses are prima facie not safe workplaces, due to the violent and horrific nature of the ‘kill floor’, which according to the evidence is liable to have adverse psychological effects on workers. This gives rise to the question of whether there are measures to eliminate or reduce this hazard that are reasonably practicable, thereby placing slaughterhouses in violation of the primary duty. It is argued that below are two examples of such measures. As above, the elements of reasonable practicability contained in ss 20(2)(a), (b) and (c) appear to be sufficiently met in relation to s 21(2)(c). In addition, the availability and suitability of the below suggested measures is likely in satisfaction of s 20(2)(d).

The first measure pertains to the ‘spillover’ of violence from slaughterhouses to local communities, as described earlier. Slaughterhouses could establish rehabilitative and counselling programs for both workers and local communities, in order to mitigate potential spillover. This might assist psychologically harmed

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<sup>52</sup> Animals Australia, *Slaughterhouse cruelty – history repeating?*, at <<http://www.animalsaustralia.org/features/slaughterhouse-cruelty-history-repeating.php>> (accessed 7 March 2018); Animals Australia, *Slaughterhouse cruelty*, at <<http://www.animalsaustralia.org/issues/slaughterhouse-cruelty.php>> (accessed 7 March 2018).

stickers who would otherwise fail to seek help, as well as ensuring that local communities are protected from such spillover.

The second measure would target workplace hazards in the long-term, through industry-funded, independent and publicly available research into the psychological hazards of slaughterhouse work. Such research could shed further light on the psychological harms borne by stickers, equipping the industry with the empirical basis from which to create remedial programs that address the health and safety hazards posed by slaughterhouse work.

For the purposes of s 21(2)(c), absent consideration of s 20(2)(e), all elements in ss 20(2)(a)-(d) are satisfied in respect of the above suggested measures for slaughterhouses operating at or below the industry standard. As a result, the above measures are likely to be considered reasonably practicable responses of such employers in relation to the maintenance of a safe workplace.

#### *4 Section 20(2)(e): the cost element*

As mentioned above, the element of cost as enshrined in s 20(2)(e) should only be considered after weighing up the other matters discussed immediately above. Also discussed above is the principle that cost will only render such measures not reasonably practicable where it is ‘grossly disproportionate to the risk’.

It is unlikely that the above suggested measures are ‘grossly disproportionate to the risk’ on this article’s interpretation of the term, as outlined above in Part III B. First, given the severity of the harms facing stickers, it is doubtful that the moderate, reductionist measures suggested would be considered as going ‘far beyond’ the broad purposes of the OHS Act. Second, as demonstrated above, stickers face ‘particularly severe’ risks working at slaughterhouses. Accordingly, even if a court was to find any of the suggested measures grossly disproportionate due to the existence of less costly and equally effective alternatives, such a finding would still entail the existence of reasonably practicable measures that slaughterhouses are failing to pursue.<sup>53</sup> Consequently, whether or not such alternatives exist, the salient point on this interpretation is that either way reasonably practicable measures do exist and that slaughterhouses are apparently not enacting them, credibly placing slaughterhouses in breach of s 21(1).<sup>54</sup> Therefore, on the foregoing interpretation of grossly disproportionate, it may be assumed for the purposes of this article that the

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<sup>53</sup> Such an analysis, requiring detailed cost estimates of the various available measures, is outside the scope of this article.

<sup>54</sup> This is because, using the HCA definition as an interpretive guide, the cost of this article’s suggested measures are not grossly disproportionate to the risk to stickers.

suggested measures are the least costly means of mitigating the relevant risks, and consequently that the costs of implementation are not grossly disproportionate to these risks. As a consequence, the costs of the suggested measures are not relevant in assessing their reasonable practicability.<sup>55</sup>

### *5 Conclusions on breach of s 21(1)*

It is not difficult to devise moderate, feasible measures that slaughterhouses can take to address the significant health and safety risks faced by stickers.

In light of Harper J's interpretation of the duty, for the purposes of both ss 21(2)(a) and (c), all elements of s 20(2) appear to be satisfied in relation to slaughterhouses operating at or below the industry standard. The above-suggested measures are therefore reasonably practicable as per s 20(2). Consequently, they or analogous measures constitute the minimum standard for compliance with the primary duty by slaughterhouses operating at or below standard industry practice, which are otherwise in breach of s 21(1). In particular, such slaughterhouses are likely to be failing to act in accordance with ss 21(2)(a) and (c), by not providing or maintaining systems of work or workplaces that are, so far as is reasonably practicable, safe and without risks to health.

Moreover, considering the abovementioned principle of health and safety protection in s 4(1), enshrining the paramount importance of worker safety, the primary duty may require slaughterhouses to undertake more drastic measures than those outlined above in order to become compliant.

## IV CONCLUSION

This article presents the significant psychological hazards faced by stickers due to the nature of their occupation and workplace, drawing on a combination of empirical and anecdotal evidence. Based on this evidence, this article contends that Victorian slaughterhouses are likely to be in violation of their primary duty, contained in s 21(1) of the OHS Act.

It is argued that standard slaughterhouse practice does not align with Harper J's articulation of the discharge of the primary duty, and consequently that slaughterhouses operating at or below standard practice are in breach of s 21(1). In particular, slaughterhouses operating at or below standard practice are likely failing to

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<sup>55</sup> *Work Health and Safety Act 2011* (Cth) s 18(e).

act in accordance with ss 21(2)(a) and (c) by not instituting measures to provide, so far as is reasonably practicable, a safe working environment. While each slaughterhouse will differ in its practices, all Victorian slaughterhouses ostensibly operate in accordance with the *Australian Standard for the Hygienic Production and Transport of Meat and Meat Products for Human Consumption*, as well as industry best practice. Accordingly, all Victorian slaughterhouses that are not currently taking OHS measures beyond those required under such industry standards are failing to adhere to their primary duty.