
Occupational Health and Safety in the Banking Industry

Anna Bunn and Robert Guthrie
School of Business Law and Taxation
Curtin University of Technology

Abstract

Although there is evidence that bank hold-ups are declining in Australia, bank staff are more likely than most other employees to be subject to armed violence. Such violent attacks may lead to severe physical and non-physical harm. Commencing in 2000 the Australian Financial Services Union engaged in a series of occupational health and safety prosecutions against a number of banks consequent upon bank hold-ups, resulting in guilty pleas and large penalties. These prosecutions probably contributed to changes in bank security processes. In addition a number of negligence actions by employees against their bank employers led to significant awards of damages alerting the banks to the need to take account of changing patterns of violent robberies. This paper examines a range of cases which have been initiated against banks operating in Australia and reflects upon the outcomes of those cases and the effects those cases have had on occupational health and safety in the banking industry. Finally the paper considers some developing issues for the future.

Introduction

Staunton J in *Derrick v Westpac Banking Corporation* stated:

The day to day operations of retail banking have long been recognised in the community as prime targets for robbery. As such they represent workplaces with inherent risks to safety for staff employed in them and the public who use them...¹

Mayhew identifies bank workers as amongst those most at risk of robbery related violence.² Indeed, the Financial Sector Union (FSU) recorded that one member had been subjected to 16 armed bank hold-ups.³ Sites where money transactions occur, such as banks and cash transit services, are clearly

at high risk of exposure to armed robbery,⁴ and a number of successful legal actions, discussed in this paper, have been brought against banks for failing to proactively manage such risks. In response to the risks of armed robbery, banks have implemented a number of measures designed to reduce their vulnerability, though in some cases not until after such risks have materialised. It would seem that these responses, some of which are outlined below, have been largely successful in reducing the overall number of bank robberies, though a change in the profile of offenders will no doubt present new challenges for banks in this respect. This paper addresses the issue of occupational health and safety in the banking industry, firstly by considering the nature and incidence of bank hold-ups in Australia and secondly by examination of a series of cases involving bank hold-ups which resulted in occupational health and safety prosecutions, negligence actions and workers compensation

¹ [2006] 76 NSWIRComm 24.

² C Mayhew, *Violence in the Workplace – Preventing Armed Robbery: A Practical Handbook* (2000) 2. She also observed a body of evidence that showed that women may be targets of violent attacks, possibly because it is anticipated they would be less likely to retaliate against an assailant.

³ Australian Broadcasting Corporation, 'In the Firing Line - Interview with Geoff Derrick', *Four Corners*, 23 February 2004, <<http://www.abc.net.au/4corners/content/2004/s1138321.htm>> at 14th September 2009.

⁴ Mayhew, above n 2, 7.

claims. Finally, the paper reflects upon the outcomes and lessons learned from those cases and some possible emerging issues in relation to banking sector workforce reductions.

The nature and incidence of bank hold-ups in Australia – the changing landscape

Grainger has observed that most robberies occurred at opening and closing times on a Monday, and were committed by male offenders, who chose locations on busy roads.⁵

Despite the fact that banks and those who work in them remain at relatively high risk of hold-ups, it is nevertheless the case that the number of hold-ups in the Australian banking industry has been reduced by up to 50% throughout the 1990s.⁶ Research by Borzycki into this decline involved an examination of data from various sources and led her to conclude that although there were fluctuations in the number of bank hold-ups in Australia in the early 1990s, there was a declining trend later in that decade which has continued into the early part of the 21st century.⁷ Interestingly, the number of bank hold-ups in the US over the same period has remained relatively constant, despite improvements in security measures.⁸ Research by Chappell and Di Martino reveals that ‘in 2001, there were more than 8500 bank robberies, translating to approximately one robbery each hour ... with a total loss of approximately US\$70 million.’⁹ Nevertheless, Borzycki noted that international research was pointing to a decline of

the bank as a target.¹⁰

Borzycki conjectures that the general decline in the number of bank hold-ups may be related to a reduction in the number of bank outlets and to the hardening of bank security. Indeed, Mayhew notes that ‘target hardening’¹¹ has been a design response taken by banks, involving the reduction of face-to-face contact when cash is exchanged, greater use of credit facilities, a change of layout and the installation of barriers, as well as the removal of potential weapons and sharp objects, and the introduction of coded security locks and electronic sensors.¹² There are likely to be other contributing factors to the decline in the number of hold-ups. The introduction of new police techniques, such as video line-ups which allow for the identification of suspects whilst preserving the anonymity of those making the identification, has been reported as one reason for the reduction in the number of hold-ups.¹³ It may also be that growing financial cybercrime has contributed to this decline, though it is not within the scope of this paper to explore that aspect.¹⁴

Whilst 48% of all Australian bank robberies during the period 1998-2002 were apparently

⁵ C Grainger, ‘How Controllable is Occupational Violence?’ (1996) 3(1) *International Journal of Stress Management* 17, 18.

⁶ Also noted in P Murphy, ‘Bank Hold-ups lose their old cost-benefit appeal’, *The Age* (Melbourne), 26 April 2003 <<http://www.theage.com.au/articles/2003/04/25/1050777404374.html>> at 27 May, 2009.

⁷ M Borzycki ‘Bank robbery in Australia’ (Trends and Issues in Crime and Criminal Justice No 253, Australian Institute of Criminology, 2003), 1.

⁸ D Chappell and V Di Martino, *Violence at work* (3rd ed, 2006) 83.

⁹ *Ibid.*

¹⁰ Above n 7, 2.

¹¹ As noted by Geoff Derrick on *Four Corners*, Australian Broadcasting Corporation, above n 3.

¹² Mayhew, above n 2, 13. See also WorkCover New South Wales, *Armed Hold-ups and Cash Handling – A Guide to Protecting People and Profits from Armed Hold-ups* (2003).

¹³ Murphy, above n 6.

¹⁴ See, for example, Russel G Smith, Nicholas Wolanin and Glenn Worthington ‘E-crime Solutions and Crime Displacement’ (Trends and Issues in Crime and Criminal Justice No 243, Australian Institute of Criminology, 2003), 2-3 <

<http://www.aic.gov.au/publications/current%20series/tandi/241-260/tandi243.aspx>> at 26th June 2009; Subramoniam Arumuga Perumal, ‘Impact of Cyber Crime on Virtual Banking’ (2008), Social Science Research Network, <<http://ssrn.com/abstract=1289190>> at 26 June 2009; John Fisher, ‘The UK’S faster payment project: avoiding a bonanza for cybercrime fraudsters’ (2008) 15(2) *Journal of Financial Crime* 155; Charles Korede Ayo and Daniel Obutope Babajide, ‘The many faces of cybercrime: the implications on e-banking’ (2006) 3(1) *The Information Technologist* 43.

committed without a weapon being recorded or sighted, Borzycki noted that the majority of bank robberies did involve firearms, with high gains for robbers and a considerable human cost.¹⁵ Borzycki also noted that bank robberies may less often be committed by ‘professionals’ and more often committed by spontaneous, ‘less skilled’ attackers, who may be more likely to engage in violence.¹⁶ Borzycki (citing Matthews) writes:

The professional armed gangs observed in the 1980s tended to avoid banks because of the increased risk of capture, and the similarly small proportion of bank hold-ups perpetrated by armed gangs in the current analysis suggests that this still holds true. However, today's unarmed gangs seemingly have little concern for the consequences of their actions: these poorly disguised and inadequately armed gangs attack banks despite the high levels of security and well-practiced staff responses to attacks. In this sense, they more closely resemble the perpetrators of a phenomenon called steaming, in which groups of unarmed and relatively unprepared offenders use weight of numbers, intimidation and confusion to achieve their ends (Matthews 2002).¹⁷

This developing profile of offenders clearly presents a series of challenges for banks. The focus of the next section of this paper is to consider how those challenges translate into legal obligations in relation to occupational health and safety imperatives.

Occupational health and safety prosecutions in the banking industry

Occupational health and safety (OSH) laws in general terms provide that employers have a duty to provide a safe working environment for their employees. An employer who is in breach of OSH legislation is liable to prosecution and upon a

finding of guilt is liable to a penalty. In most cases prosecutions are undertaken by statutory authorities charged with that responsibility as it is only the relevant statutory authority that has the legal standing to bring prosecutions for breaches of OSH legislation. In New South Wales, however, OSH legislation allows unions to bring prosecutions for breaches of OSH legislation and, whilst it has been noted that the power of unions in NSW to bring such prosecutions is ‘only occasionally used due to the costs involved’¹⁸ nevertheless it has given rise to a number of cases brought against banks by the Finance Sector Union. As noted below a number of hold-ups in the late 1990s and into the 21st century led to a series of prosecutions which effectively map the changing nature of bank safety and risk assessments and the changing nature of armed robberies.

In the case of *Secretary, Finance Sector Union of Australia, Commonwealth Bank Officers’ Section, NSW Branch v Commonwealth Bank of Australia*,¹⁹ which appears to have been the first major prosecution of this kind, the Commonwealth Bank was charged with a breach of s 15(1) of the *Occupational Health and Safety Act 1983* (NSW) for failing to ensure the safety of four employees who sustained injuries as a result of an armed hold-up which took place at the bank’s branch in Wellington, New South Wales in August 1999. The charge related to the bank’s failure to carry out adequate risk assessment of the security needs of that branch. Section 15(1) of the *Occupational Health and Safety Act 1983* (NSW) required an employer to protect employees from

¹⁵ Borzycki, above n 7, 2.

¹⁶ Ibid.

¹⁷ Ibid 3-5. See also above n 3.

¹⁸ See s 106 *Industrial Relations Act 1996* (NSW) and R Johnstone, M Quinlan and M McNamara, ‘OHS Inspectors and Psychosocial Risk Factors: Evidence from Australia’ (Working Paper No 60, National Research Centre for OHS Regulation, 2008)

<<http://ohs.anu.edu.au/publications/pdf/wp%2060%20-%20Johnstone%20et%20al.pdf>> at 15 July 2009.

¹⁹ [2001] NSWCMC 97.

foreseeable harm but also to take care to search for and identify risks and to institute measures to guard against those risks.²⁰ At the time of the Wellington hold-up in 1999, the bank had a reactive policy in relation to risk which generally entailed the bank responding to known risks. No risk assessment had been completed at this branch because the bank's investigations identified Wellington as a low risk area in relation to hold-up activity. Importantly, correspondence between the bank and the prosecuting union prior to the hold-up showed that the union had put the bank on notice of the potential for hold-up activity in Wellington. Consequent upon the robbery in August 1999 the bank installed anti-jump barriers and security cameras and hired and stationed a guard at the branch for a month. With a plea of guilty a fine of \$25,000 was imposed on the bank.

In *Derrick v Australian and New Zealand Banking Group Ltd*,²¹ the ANZ bank was charged with a breach of s 8(1) of the *Occupational Health and Safety Act 2000* (NSW) which related to an armed hold-up which took place in Brookdale, NSW in June 2002. The robbery took place when the offenders jumped the bank counters and scaled an anti-jump barrier (AJB). There was a 400mm gap between the AJB and the ceiling which allowed the offenders to gain access to the cash handling area of the bank. Section 8(1) is in similar terms to its predecessor s 15(1) of the *Occupational Health and Safety Act 1983* (NSW) which was the basis for the prosecution of the Commonwealth Bank in the case referred to above. Between 2000 and 2001 the prosecuting union had identified the risk of allowing gaps between AJBs and ceilings sufficient to allow access by intruders. Between January and March 2002 a number of hold-ups

took place at ANZ branches where intruders had leapt over AJBs. In May 2002 the ANZ identified Brookdale's AJBs as in need of modification,²² but at the time of the June 2002 robbery no modifications to the AJBs had been made. In this instance the bank pleaded guilty, but was fined \$156,000 on the grounds that it had been put on notice of the potential for offenders to leap AJBs prior to the hold-ups of January and March 2002 and that certainly after March 2002 it should have recognised the modus operandi of offenders in leaping AJBs. Notably the ANZ had identified that the cost of installation of AJBs throughout all of its New South Wales branches would have been \$476,000, with a cost of only \$18,766 to the Brookdale branch.

In 2005 the FSU launched another prosecution of the ANZ, again for a breach of s 8(1) of the *Occupational Health and Safety Act 2000* (NSW) relating to the inadequate installation of AJBs, this time at its Peakhurst, NSW branch.²³ In August and again in November that branch was subjected to armed hold-ups where offenders leapt over sales counter desks forcing staff to allow access to cash handling areas. Whilst some areas of the bank were protected by AJBs the sales counters were not. Again evidence showed that the prosecuting union had drawn the bank's attention to the inadequate protection of staff in the 'retail workplaces' several months prior to the hold-ups. Following a guilty plea by the bank it was noted that the bank was a second time offender and a penalty of \$175,000 was imposed. It was noted that the bank did not have a 'dangerous propensity' to reoffend, but rather there was evidence of a systematic failure that had prevailed in the bank over the period covering the two

²⁰ So held in *WorkCover Authority of NSW v The University of Sydney* (Unreported Hill J Matter No CT 1280 of 1995, 2 April 1997).

²¹ [2003] NSWIRC 406.

²² In all, 86 ANZ branches were identified as needing wire meshing to close gaps between AJBs and the ceilings of the banks.

²³ *Derrick v ANZ Group Limited* [2004] NSWIRC 59.

offences. Following the hold-ups a consultant recommended installation of AJBs at the sales counters.

In *Presdee v Commonwealth Bank of Australia*,²⁴ the FSU prosecuted the Commonwealth Bank for a breach of s 8(1) of the *Occupational Health and Safety Act 2000* (NSW) following armed hold-ups of the bank's automatic teller machine (ATM) facilities in Guildford, NSW in April 2004 and Woy Woy, NSW in May 2004. In both instances bank staff were accosted whilst they were servicing ATM facilities through the back of the machine from the inside of the bank. In both instances the offenders smashed their way into the bank through glass entrance doors by using a sledgehammer, and demanded that staff hand over ATM canisters. It was found in evidence that staff could be observed servicing the ATMs through the glass entrance doors and that in order to service the ATMs staff would perform that task outside the otherwise secured areas. In addition, notices were placed on the ATM machines to indicate staff would be servicing the machines. Sums of up to \$200,000 were held in the ATM canisters. Notably, in relation to the Guildford hold-up, one employee was restrained by the offenders who threatened to kill her if she did not give them access to the ATM canisters. She suffered psychological injury and took approximately three weeks off work, lodging a workers compensation claim. The bank was fined \$162,500 after a guilty plea, however in this case after some consideration the penalty was paid as a moiety to the union prosecutor. Notably, the *Occupational Health and Safety Act 2000* (NSW) allows the court to direct the penalty imposed to be paid as a moiety to a union secretary who has power under the Act to initiate prosecutions. The court noted the 'manifest involvement of unions in relation to

workplace safety'.²⁵ The Australian Council for Trade Unions notes that '...the CBA Guildford and Woy Woy case makes it obvious that the threat to the security of bank workers is constantly evolving'.²⁶

Finally in this series of FSU prosecutions, in *Derrick v Westpac Banking Corporation*²⁷ Westpac bank was prosecuted and pleaded guilty to a breach of s 8(1) of the *Occupational Health and Safety Act 2000* (NSW) consequent upon a robbery which occurred at its Avalon, NSW branch in September 2004, when two offenders gained access to the cash handling area of the bank after leaping AJBs. The evidence revealed, not surprisingly, that the FSU had been in correspondence with Westpac Bank in relation to AJBs and suitable installation requirements for some years prior to the Avalon hold-up, although the court did not accept that Westpac was necessarily informed about similar situations which had occurred at competitor banks. In the

²⁵ At the time of writing the Commonwealth and State governments have entered into a process whereby OSH laws may be harmonised or made uniform across Australia. The right of a union to prosecute an employer has been omitted from the proposed uniform laws. For commentary on this aspect see, for example, Paul Cutrone, *Harmonisation of Occupational Health and Safety Laws – Second Report* (2009) International Law Office
<<http://www.internationallawoffice.com/newsletters/detail.aspx?g=161cb21e-b6ce-4bdc-8def-e520b53216d5>> at 26 June 2009; Australian Council of Trade Unions, 'Workers' Lives at Risk: New Union Push for Tougher National Health and Safety Laws' (Press Release and Fact Sheet, 11 May 2009) <<http://www.nasca.org.au/assets/documents/Health%20&%20Safety%20laws.PDF>> at 26 June 2009. For a criticism of the New South Wales approach see, Work Reform Unit, *Submission to the National Review of OHS Law* (2008) Institute of Public Affairs
<<http://www.nationalohsreview.gov.au/NR/rdonlyres/9BF61A1C-EFB6-46D4-8099-3F4F400969F7/0/190InstituteofPublicAffairs.pdf>> at 26 June 2009.

²⁶ Australian Council of Trade Unions, *The Highest Standards for OHS Law: Submission by the Australian Council of Trade Unions for the National Review into Model Occupational Health and Safety Laws* (2008)
<<http://www.nationalohsreview.gov.au/NR/rdonlyres/5E671029-DF53-4EFC-ACAF-A1A11D6C6DC4/0/214ACTUFINAL.pdf>> at 15 July 2009.

²⁷ [2006] NSWIRC 76.

²⁴ [2005] NSWIRC 389.

end the bank was fined \$145,000, with payment again as a moiety to the union prosecutor.

It is arguable that at least to some extent the actions by the Financial Services Union in bringing prosecutions against these banks have resulted in some changes in bank security and occupational health practices, although it might be hard to separate this incentive for change from the costs of such thefts.

Although the cases above illustrate a number of OSH breaches resulting in fines, these prosecutions did not result in any payment to employees who suffered injury or harm as a consequence of the hold-ups. Grainger's research reveals the significant and long-term effects on the health of workers involved in a hold-up. According to this research, 90% of those involved took up to one year to recover from the effects of the incident, whilst the remaining 10% required follow-up assistance, although the period and frequency of follow-up was not specified.²⁸ Manton and Talbot document research which evidences a range of symptoms arising from violence in the workplace, including but not limited to, shock, disbelief, helplessness, anxiety, anger, fear, terror and depression.²⁹ In most cases these symptoms respond to early interventions which assist the victim in coming to terms with the events, although the effects of violence at

work can be long-term.³⁰ They observed that the success of some interventions may depend on the group dynamics within a workplace, such that in a 'hierarchical situation such as a bank, a powerful manager can send messages (conscious or unconscious) that the expression of feelings is not permissible and/or that this group is really functional.'³¹ They noted that it is difficult for senior staff to appear to be open and vulnerable as this may affect their ability to support other staff and maintain necessary authority.³² The effect of hold-ups on the overall morale and thus productivity of the banking workplace may be much more insidious than the presentation of symptoms such as those referred to above, and for that reason difficult to determine precisely. Nevertheless, employees injured in hold-ups may in some circumstances have the right to bring a claim for compensation against the bank and the cases described below relate to such claims.

Negligence and compensation claims against banks following hold-ups

In *Kirtland v The Commonwealth Bank of Australia*³³ the plaintiff claimed damages against the Commonwealth Bank in relation to two armed hold-ups which occurred in August 1987 and March 1988. The core allegations of negligence against the defendant bank were that the bank failed to install bullet resistant barriers (BRBs) or rising security screens (RSSs) in the bank where the plaintiff was the manager, and that it failed to engage a guard following the first hold-up. In each case the hold-ups occurred when the offenders entered the bank with weapons and ordered customers and staff to lie prone on the floor. There were no barriers in place to prevent the offenders

²⁸ Grainger, above n 5, 18.

²⁹ Also noted in WorkCover New South Wales, above n 12, 9; J Miller-Burke, J Attridge and P Fass, 'The Impact of Workplace Screening on the Occurrence of Cumulative Trauma Disorders and Workers Compensation Claims' (1999) 41(2) *Journal of Occupational and Environmental Medicine* 73; H A Macdonald, V Colotla, S Flamer and H Karlinsky, 'Posttraumatic Stress Disorder (PTSD) in the Workplace: A Descriptive Study of Workers Experiencing PTSD Resulting from Work Injury' (2003) 13(2) *Journal of Occupational Rehabilitation* 63; B Hills, 'Shock Tactics', *The Sydney Morning Herald* (Sydney), 13 June 1998.

²⁹ Australian Broadcasting Corporation, above n 3.

³⁰ M Manton and A Talbot, 'Crisis Intervention After an Armed Hold-up: Guidelines for Counsellors' (1990) 3(4) *Journal of Traumatic Stress* 507, 508-9.

³¹ *Ibid* 508-9.

³² *Ibid* 515.

³³ [1993] SASC 4294.

entering into cash handling areas. The analysis of the court appears to be that none of the barriers could have prevented a robbery, although the combination of barriers and the presence of a security guard might have had that effect. As a consequence of finding that the bank was on notice of the risk of hold-up due to the first incident, a finding of negligence followed from its failure to take any preventative action (such as engaging a security guard) before the second event. The plaintiff was awarded damages for psychological injury giving rise to pain and suffering, and for medical expenses, although a claim for economic loss was not made out on the evidence.

In *McMillen v Brambles Security Services Limited*³⁴ the action for negligence against the employer concerned a hold-up during the delivery of cash to a bank. The plaintiff, McMillen was a security guard employed by the defendants who operated a business of armoured car escort work. It was contracted to collect cash from the Reserve Bank of Australia and deliver it to commercial banks. Cash was delivered by means of armoured cars with three guards, including the driver of the car. In addition a 'chase car' might accompany the armoured car for the purpose of checking the area where deliveries would be made and overseeing procedures on the road and in the street. In November 1995 the plaintiff was taken hostage by two gunmen whilst in the course of his employment. The plaintiff had been in the course of delivering cash to one of two adjoining banks when his attention was drawn to two suspicious men in nearby telephone booths. These men subsequently overpowered him and forced the plaintiff into a nearby bank which, using the plaintiff as a hostage, they robbed. The plaintiff alleged that the defendant was negligent in that the

driver of the armoured car failed to alert him to this danger and drove off. There was no 'chase car' present during these events. In addition the plaintiff alleged that the defendant was negligent in failing to provide him with a hand-held radio upon which to communicate outside the armoured car. Evidence also showed that there had been a departure from procedures in progressing deliveries between banks, such that two of the three guards should have been on the street during this manoeuvre. It was held by the Supreme Court of Queensland that those omissions established the defendant's negligence. In essence the finding was that the plaintiff should not have been left in a position where he was out of contact with the other guards. The plaintiff suffered significant psychological injury and loss of income consequent upon the incident and the award of damages was for \$576,911.54.

In *Faucett v St George Bank Ltd*³⁵ a full court of the Supreme Court of New South Wales found the St George Bank negligent in failing to provide a system of work, namely protection by security guard, which would protect employees whilst in possession of cash in bags. The court found that in June 1998 the plaintiff was carrying out her bank teller duties shortly after delivery of cash from an armoured car (under contract through Brambles Security) when an armed offender entered the bank and demanded the plaintiff hand over bags of cash which were still lying at the plaintiff's feet in preparation for counting into her drawer. The court noted that the system of delivery of cash was to an unprotected counter in the bank and carried out in full view of the public. Interestingly, the court was not prepared to hold that installation of AJs would have prevented this hold-up based on expert evidence lead by the defendant bank to this

³⁴ [2001] QSC 271.

³⁵ [2003] NSWCA 43.

effect.³⁶ The plaintiff did not lead expert evidence to establish that AJBs would have prevented the hold-up. An award of \$101,305 was made in favour of the plaintiff.

Thus it can be observed that there was a general trend throughout the 1990s for plaintiffs to succeed where inadequate security measures had been taken. In particular where the defendant has been put on notice that an attack is reasonably foreseeable, either through evidence of correspondence from a union or official crime statistics, the court is likely to find the defendant has breached the standard of care. Interestingly, changes to workplace negligence laws in the last decade may make common law claims for damages harder for bank employees as almost all jurisdictions have either removed or reduced the capacity of employees to sue for psychiatric or psychological harm.³⁷

These cases reveal the need for banks to constantly review security measures and to be proactive, rather than reactive, in implementing security measures and carrying out risk assessments. As noted by Borzycki, 'because effective offence prevention is not a static process and must consider local conditions and changes over time any changes in bank robbery may necessitate changes in the security processes and strategies adopted by banks.'³⁸

³⁶ On the question of expert evidence in relation to hold-ups see *Ogden v Bells Hotel Pty Ltd* [2009] VSC 219 at paras 158-171, which relates to a discussion of the nature of acceptable evidence from a suitably qualified expert witness.

³⁷ Australian Broadcasting Corporation, above n 3. Specifically, in Victoria, New South Wales, Western Australia and Queensland, access to common law claims by employees against employers requires evidence that the employee has suffered a permanent impairment, usually within a range of 15-20% as measured by the AMA Impairment Guides. It is notoriously difficult for non-physical injuries to be assessed at such levels.

³⁸ Borzycki, above n 7, 2: references omitted.

The cases discussed above illustrate that workers will be entitled to damages where they can show that a particular incident resulted in harm, including psychiatric injury, as a consequence of a breach of the duty of care of the employer. Where no breach of duty of care takes place, but there is a work-related injury or disease, a worker may still be entitled to make a claim where it can be established that that the employment was a significant or material contributor to the worker's medical condition.³⁹ Workers compensation is also payable in a hold-up situation even where a breach of duty of care is apparent, but payments of compensation will be taken into account when damages are ultimately awarded.⁴⁰ In addition to any claims for workers compensation and/or damages, a person who is injured as a consequence of a criminal activity, such as an armed hold-up, will generally be entitled to make a claim for criminal injuries compensation available in each jurisdiction in Australia. Such a claim can only usually be made after all other avenues of redress have been pursued. Awards for pain and suffering and loss of income can be made, although in all jurisdictions there is a statutory maximum which caps awards.

Examples of where this has occurred appear from a series of Western Australian cases. It is a requirement that applicants must pursue all other remedies prior to seeking criminal injuries compensation. For instance, s 21 of the *Criminal Injuries Compensation Act 1985* (WA) provides that 'the assessor may require the victim to take proceedings to obtain the compensation, damages

³⁹ See generally the survey of these provisions in R Guthrie, 'The Australian Legal Framework for Stress Claims' (2007)14(4) *Journal of Law and Medicine* 528.

⁴⁰ An example of a case involving workers compensation following a bank hold-up is *Skoblar v Comcare* [1996] AATA 56 where the Commonwealth Bank was ordered to make payments of compensation, notwithstanding the worker had resigned her employment due to stress related conditions. Similarly in *Hardy v Comcare* [1998] AATA 944 the applicant claimed for PTSD following a hold-up.

or payment and may defer the application pending the determination of those proceedings'. Section 42 of the same Act requires the assessor to take into account payment received as damages or compensation from other sources. In *Jones v Armstrong*,⁴¹ the applicant was required to pursue a workers compensation claim prior to the assessment of her claim for criminal injuries. She was the subject of two armed hold-ups in 1997 whilst working for the Home Building Society. In both cases she was confronted by offenders armed with firearms. After the second incident she resigned her employment. An award of \$5000 was made for pain and suffering arising from the first incident, and \$15,000 in respect of the second incident, comprising \$7500 for pain and suffering and \$7500 for loss of income earning capacity. In *Sutherland v Hart*⁴² the applicant was also working for the Home Building Society during 1997 and made a claim in respect of the same hold-up referred to as the second incident in *Jones v Armstrong*. Somewhat surprisingly she was also the subject of two other hold-ups, unrelated to her employment. The applicant was awarded a total \$144,221 in relation to the three incidents. In *Chappell v Bowe*⁴³ the applicant was working for the National Australia Bank during which she was involved in three armed hold-ups. She settled a workers compensation claim in respect of these injuries for \$80,000. Additional awards of \$500 and \$1500 were made under the *Criminal Injuries Compensation Act 1985* (WA) in relation to the first two incidents and taking into account the workers compensation payment a further award of \$29,000 was made for pain and suffering in relation to the third incident.

It follows that a bank hold-up may have a number of ramifications in terms of legal action involving a bank. In the first instance it is clear that breaches

of occupational health and safety by a bank may result in prosecution of that institution. The resultant injuries suffered by any employees may be compensated in some cases by negligence and breach of statutory duty actions. Such claims may not always be easy to establish as *Faucett v St George Bank Ltd* suggests that plaintiffs will need to lead expert evidence to establish a causal link between the employer's failure to install a particular anti-hold-up device and the resultant injuries to the employee. More common will be workers compensation claims arising from workplace stress, which do not require the employee to establish fault on behalf of the employer. In addition, where an employee has suffered harm and has made a workers compensation claim it is possible for the employee to seek additional compensation from pain and suffering under criminal injuries compensation laws. Importantly, the last form of payment is borne by the public purse rather than the employer.

Occupational health and safety and bank hold-ups – the future

As noted it is arguable that the series of successful prosecutions brought by the Financial Sectors Unions discussed above and also negligence actions by affected workers themselves have contributed to improved security within banks. Indeed the Australian Council of Trade Unions (ACTU) notes that 'one of the most significant factors in the reduction of these incidents was the capital investments of millions of dollars to achieve "target hardening" across the industry.'⁴⁴ Clearly there are other imperatives at work, not least the costs of claims generally and actual financial losses suffered. The improved security arrangements which can in part be traced through the line of cases noted above may, in turn,

⁴¹ *Jones v Armstrong* [2002] WADC 130.

⁴² *Sutherland v Hart* [2004] WASC 217.

⁴³ *Chappell v Bowe* [2006] WADC 29.

⁴⁴ Australian Council of Trade Unions, above n 26.

have contributed to a decline in the number of bank hold-ups in Australia, and the ACTU again notes that the number of bank robberies in NSW banks declined by 64% in the 4 years after the FSU launched its first prosecution in 2004.⁴⁵ Recently proposed changes to Australian OHS laws would mean, if implemented, that the unions no longer had standing to prosecute banks for breaches of OHS laws, including in such circumstances as those that led to the union prosecutions referred to above. A number of commentators have asserted that this is a retrograde step.⁴⁶ Those against the power of unions to prosecute OHS matters argue that this power can be used irresponsibly.⁴⁷ On the above evidence such a claim is hard to make out, particularly when in each recorded case the defendant bank has admitted guilt. The work of the union in alerting the banks to potential harm was a significant factor in the success of those prosecutions. Of course the relevant statutory authorities may still commence prosecutions where appropriate, although the evidence in each of the cases discussed above suggests that in some cases, for reasons best known to the authorities, prosecutions were not pursued by the relevant authorities, so that unions were left to take the lead.

It is, of course, impossible to predict with any accuracy whether the number of bank hold-ups in

Australia will continue to decrease. Some evidence from the US points to a recent rise in the number of hold-ups which has been linked to the current economic down-turn.⁴⁸ Whether a similar increase will be experienced in Australia remains to be seen, although arguably the effects of the economic downturn have been less severe in Australia and given that the decline in bank hold-ups in Australia may be due in large part to improved security, it is possible to speculate that a significant increase in hold-ups even during periods of economic downturn is unlikely. In fact, as Borzycki points out 'crime prevention lessons learnt from the banking sector may be generalised to other locations that have experienced increases in robbery in recent years...'⁴⁹

Nevertheless, it would be premature to consign the issue of OHS relating to bank security to the annals of Australian banking history. Whilst the number of robberies in Australian banks has shown a general decline over the last few years, research has shown that robberies occurring in banks and financial institutions are more likely to involve a firearm than armed robberies in any other location.⁵⁰ In December 2008, staff at the Commonwealth Bank's North Strathfield branch were threatened with a pistol and then tied up by a

⁴⁵ Ibid. As noted in this paper, the trend in hold-up activity in the US has, despite improved security measures, remained constant: this situation illustrates that multiple factors influence trends in hold-up activity with improved security being but one.

⁴⁶ Michael Quinlan, 'Achieving Efficiency and Accountability in Occupational Health and Safety and Workplace Reform' (Working Paper No 120, University of New South Wales, 1995) <<http://www.docs.fce.unsw.edu.au/orgmanagement/workingpapers/wp102.pdf>> at 26 June 2009; Richard Johnstone, Liz Bluff and Michael Quinlan, *Submission to National OHS Review* (2008) <<http://www.nationalohsreview.gov.au/NR/rdoonlyres/9BBA7F4C-503B-40DE-9B4F-477FC279CE49/0/055JohnstoneBluffQuilan.pdf>> at 26 June 2008.

⁴⁷ See, for example, Work Reform Unit, above n 25.

⁴⁸ Federal Bureau of Investigation, 'Special Report: Bank Robberies in United States' (2002) <http://www.fbi.gov/ucr/cius_02/html/web/specialreport/05-SRbankrobbery.html> at 26 June 2009; George A Bryjak, 'A Breakdown of Bank Robbery Trends', *Adirondack Daily Enterprise* (Saranac Lake, NY, USA), 15 April 2009 <<http://www.adirondackdailyenterprise.com/page/content.detail/id/505980.html>> at 26 June 2009; Chris Joyner, 'Bank Robberies Up Around USA' *USA Today* (McLean, VA, USA), 16 June 2008 <http://www.usatoday.com/news/nation/2008-06-15-bankrobberies_N.htm> at 26 June 2009; Ray Stern, 'Bank Robberies on the Rise in the Valley; Feds and Local Authorities Pledge to Work Cases Hard', *Phoenix New Times* (Phoenix, AZ) 27 May 2009 <http://blogs.phoenixnewtimes.com/valleyfever/2009/05/bank_robberies_on_the_rise_in.php> at 26 June 2009.

⁴⁹ Borzycki, above n 7, 2.

⁵⁰ Ibid.

bank robber dressed as a woman.⁵¹ In February 2009, an armed hold-up took place at the Noosa branch of the Bank of Queensland,⁵² and in March 2009 a single robber armed with a shot gun held up the Cranbourne branch of the Bank of Queensland in Melbourne.⁵³ Notwithstanding research which shows that many hold-ups are committed by offenders without guns, the fear of armed robbery amongst bank workers cannot be discounted and, as noted by Borzycki '[t]hese weapons have the most lethal potential and, although infrequently discharged, engender the most fear in victims.'⁵⁴ Additionally there is some evidence that as banks have improved security inside bank buildings offenders put more attention on softer targets, moving⁵⁵ (as has been observed above) towards ATM robberies, and in some cases to armed robberies, or bottle shops and petrol stations.⁵⁶ It may be that some of the lessons

learned by the banks may be transferable to other sectors.

Also worthy of note is the issue of impending staff cuts within the banking industry which may have an impact on bank security and the occupational health and safety of workers. In its 2007-2008 Annual Review, the Financial Services Union (FSU) refers to the 'pressure caused by inadequate staffing' and notes the results of an audit of over 300 National Australia Bank (NAB) branches throughout Australia which found that 70% of respondents reported an increase in workload due to staff shortages. In 2008 NAB introduced a pilot project in Queensland involving single person opening and periods of single person operation in the branches.⁵⁷ This pilot has led the FSU to express its concerns that '[w]orking alone may increase the vulnerability of finance workers to the threat of armed hold-up and to increased risks of dealing with aggressive and abusive customers.'⁵⁸ Whether or not the pilot project gives rise to more widespread single-person bank operation remains to be seen.

Conclusion

Australian bank workers, whilst statistically less likely to be subject to a hold-up than they were at the beginning of this decade, remain among those groups of workers most at risk of hold-ups. As such, bank security and related issues of occupational health and safety of bank workers will remain high on the agenda of staff and their unions. The removal, through the OHS harmonization process, of the right of the New South Wales FSU in particular (and unions in general) to prosecute may be a retrograde step in workplace safety for banking employees.

⁵¹ 'Thief All Frosted up for Unauthorised Withdrawal', *The Daily Telegraph* (Sydney), 10 December 2008, <<http://www.news.com.au/dailytelegraph/story/0,,24777864-5001021,00.html>> at 18 June 2009.

⁵² 'Police Hunt Bank Robber After Noosa Hold-up', ABC News, 19 February 2009, <<http://www.abc.net.au/news/stories/2009/02/19/2496425.htm>> at 18 June 2009.

⁵³ M Cooper, 'Robber Threatens Bank Staff', *The Age* (Melbourne), 19 March 2009, <<http://www.theage.com.au/national/robber-threatens-bank-staff-20090319-9324.html>> at 18 June 2009.

⁵⁴ Borzycki, above n 7, 2.

⁵⁵ Often referred to as crime displacement.

⁵⁶ See for example Smith, Wolanin and Worthington, above n 14, 2-3; Queensland Police Service, *Are You a Soft Target?* (2005) <<http://www.police.qld.gov.au/Regional+Policing/metroNorth/robbery/target.htm>> at 26 June 2009; NSW Police Force, *PACT Meeting Report: Bankstown LAC* (2006) NSW Government

<http://www.police.nsw.gov.au/community_issues/cspc/south_western_metro_region/bankstown/reports/2006/20060428> at 26 June 2009. See also the recent decision of *Norris v Brumar (Victoria) Pty Ltd (No 2)* [2009] VSC 218 (9 June 2009) where the defendant employer admitted liability for negligence where a manager of a service station was subject to violent armed robbery, occurring in 1999. An award of \$618,500 was made. Likewise in a judgement given on the same day in *Ogden v Bells Hotel Pty Ltd* [2009] VSC 219 where an award of \$825,000 was made in favour of a hotel worker who was the subject of an armed robbery. The Supreme Court held the employer negligent for failing to implement proper procedures for the deposit of daily takings from a hotel. The court held that the employer had failed to prevent the hotel from becoming a soft target.

⁵⁷ *What's Happening @ NAB?* (2008) Finance Sector Union Australia <http://wotnews.com.au/like/whats_happening_nab/2625111/> at 9 June 2009.

⁵⁸ *Ibid.*