

# Employer and Union Responses to Traumatic Death at Work: Evidence from Australia

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## Abstract

Little is known about how employers and trade unions deal with work-related death, even in higher-risk industries. This study examines union and employer responses to work-related death. Drawing on interviews conducted with 48 representatives from the key organisations involved in workplace death in Australia, the aim was not only to determine how employers and unions see their respective roles, but also how other organisations (safety regulators, insurers, compensation authorities and family support/advocacy groups) perceive their activities. The findings identify critical institutional relationships and their implications for both industrial relations and victim's families. They show areas of agreement and disagreement between unions and employers. They also highlight the impact of changes to work arrangements and industrial relations, most notably the growth of self-employment/subcontracting and declining union density, on the experience of families. The study also points to the support role provided by unions as another dimension of their contribution to social capital and how some recent initiatives were extending these activities.

## Introduction

Work-related injury, illness and disease continue to impose a significant cost on the community, even in wealthy and developed countries. The cost burden of traumatic death at work (work-related death) is substantial. The latest estimates by the International Labour Organization (ILO) indicate that there are globally 2.2 million work-related deaths and that workplace injury, illness and death cost the global economy some \$US1,250,000 million or 4 per cent of world GDP (ILO, 2003). Similarly, SafeWork Australia (2015) estimated that the total cost of work-related injury and disease in Australia was \$AU61.8 billion in 2012-13, representing 4.1 per cent of GDP (a drop from 5.9 per cent in 2005-06). These estimates are based on direct and indirect costs to employers, workers and the community and mainly relate to institutional or readily estimable processes like productivity losses, compensation, litigation, prosecution, medical expenses, hours/overtime, insurance, loss of earnings, funeral and carer costs (Safe Work Australia, 2015: 15). Employers only bear 5% of these costs with the bulk being borne by workers (77%) and the community (18%). Since 2000-2001 the cost burden on workers has

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increased from 44% to 77%, the burden on employers increased from 3% to 5% while that on the community dropped from 53% to 18% (Safe Work Australia, 2015:3). The imbalance in the cost burden and the significant redistribution over time has occasioned no public debate we are aware of. Further, here is little if any explicit recognition of the impact on families even in economic terms let alone the more difficult but still tangible costs in terms of human suffering and social dislocation (including effects on the education and life-chances of affected children).

The figures don't include a measure for each work-related death but data for transport related deaths provide a guide. Estimates by the Australian Bureau of Transport Economics (Risby, de Silva, & Tong, 2007) indicate that the average cost of each death in road transport, including deaths other than work-related deaths, was \$A1.7 million in 1996 (\$A2.64 million when adjusted to 2013 dollars). On this basis, the estimated cost of the 186 work-related deaths in Australia in 2012-13 is \$A491 million. As with Safe Work Australia data these estimates do not capture the cascading financial, psychological, social, and human costs to the families of those killed or adverse effects on work colleagues (Anderson, Schulte, Sestito, Linn & Nguyen, 2010). These additional effects multiply the impact because the vast majority of deaths affect close relatives, such as spouses or partners, parents, children, brothers or sisters.

Understandably, much of the focus of research, policy debate and employment practices has been on reducing the toll of those whose health, safety and well-being has been directly impaired by work because it will reduce the substantial levels of economic costs and human suffering. At the same, there are policy strong grounds for examine what injury and death mean for those affected, both directly and indirectly (including families). Greater knowledge of the workplace impact of injury and death is likely to strengthen the case for stronger preventative measures. Just as important, it is important to understand these impacts so as to better support those affected. Work-related death is the most acute example of a failure in safety that is likely to seriously impact on the family and friends of the deceased. However, non-fatal disabling injuries or diseases can also have profound effects. For example, a worker suffering a disabling injury may require a significant level of care from family members (most typically children or a spouse) and this in turn can have a serious burden on family members. Indeed, during the course of this project one interviewee described how such an injury to their father in law had placed a significant stress on their marriage because of the amount of time his spouse needed to spend caring for her father. While these issues clearly warrant research the focus of the current study was on responses to work-related deaths. Hopefully, this study will facilitate further research into other dimensions of the impact of adverse work outcomes on families.

While there is an extensive research literature on workplace death, it overwhelmingly focusses on investigative, regulatory and judicial responses. Little of it makes more than passing reference to workers or workers' families (for an exception with regard to families of the 1988 Piper Alpha oil rig disaster in the North Sea which claimed 167 lives, see Alexander, 1990; 1991). A small body of relevant research has taken an organisational management perspective (Lee, 1994; Urban Ministry Network, 2000; Sinclair & Haines, 1993). For example, in a study of 18 employers involved in workplace fatalities in Victoria, Australia, Sinclair and Haines, (1993) found that, in conjunction with a sense of shock and shame, concerns over legal liability led a majority of employers to distance themselves from responsibility rather than to confront and learn from it. Organisations that displayed a reflective response and acknowledged the need for organisational review and improvement were better able to respond constructively to the tragedy and make changes to avoid similar events occurring again. Research by Lee (1994) and Urban Ministry Network (2000) also illustrates the importance of developing appropriate organisational responses to work-related death to mitigate its long-term effects

and enable successful coping. Studies on work injury and illness have also highlighted the negative effects on family well-being of institutional responses perceived to be unjust and inequitable (Dembe, 2001; Lippel, 2007; Kirsh & McKee, 2003). Although in its infancy, an emerging body of research has shown that institutional responses to a work-related death may impose significant additional harm on families of deceased workers (Brookes, 2009; Matthews, Bohle, Quinlan & Rawlings-Way, 2012). Available evidence suggests work-related deaths commonly have a severe financial impact on families and compensation or other payments are inadequate (Quinlan, Fitzpatrick, Matthews, Ngo, & Bohle, 2015). The negative consequences of long-term exposure to the compensation, investigative, and judicial processes that inevitably delays families receiving information about the circumstances of the death of their loved one complicated the bereavement process and are reported to exacerbate health consequences (Matthews, Quinlan, Rawlings-Way & Bohle, 2012). This research<sup>1</sup> identified serious management issues that require further investigation to guide improvements in policy and practice. This article seeks to address these gaps in existing knowledge by examining employer and union responses to work-related death in Australia and their implications for industrial relations and for surviving families.

Almost all the research described above has been published in health, medical and law or criminology journals. Treatment of workplace death, even in an incidental fashion, is rare in industrial relations/labour studies or HRM journals (for an exception see Holland & Pyman, 2011). More typically, OHS-related studies in industrial relations journals over the past decade have dealt with union campaigns over safety, the operation and effects of workers' compensation regimes, testing whether there are compensating payments for dangerous work and, more recently, the OHS effects of precarious work arrangements including subcontracting (see for example Dorman & Hagstron, 1998; Hyatt & Kralj, 2000; Underhill & Quinlan, 2011). In some respects, the limited interest in this issue may be a consequence of the development of workers' compensation and other elements of the welfare state (social security/pensions, state education and health services provision). Prior to these developments, financial support to bereaved families relied on the benevolence of the employer, community collections (more common in the case of multiple fatality incidents), other family members or unions. By the early 19<sup>th</sup> century, mutual insurance was a key function of many craft unions, including friendly society benefits like unemployment payments (and assistance finding work through a House of Call), sickness benefits and funeral funds. Some unions covering dangerous industries, including miners unions, retained doctors to assist in the treatment of their members and organised collections for families when a member was killed. More generally, unions campaigned vigorously for a workers' compensation regime to alleviate distress on families as well as OHS laws to protect workers (Quinlan, Bohle, & Lamm, 2010). This activity can be seen as one element of the broader interest that organised labour had in the living standards of workers, their families and working communities.

The introduction of a relatively comprehensive welfare regime and other regulation has not meant that unions are no longer involved in supporting families, though their role has changed. Some unions continue to provide 'pastoral' care to the families of their members (and in some instances even non-members) who have been killed at work, including financial assistance, emotional support and advocacy, and helping them with the complex institutional and regulatory processes following the death. Nor is this support confined to work death. For example, it is common (in Australia at least) for unions to retain legal advice to assist injured workers making claims. The extent of these activities varies according to the union's resources and policies as well as industry characteristics, a topic worthy of more systematic research in itself. Further, these activities can be seen as a dimension of the union movement's contribution to social capital, a neglected area of union activity and one which, if developed further through social networking, also holds prospects for union renewal (Jarley, 2005).

When a work-related death occurs in Australia, various organisations become involved and a series of institutional processes is initiated. While there are jurisdiction-specific factors, in broad terms, what occurs in Australia can be found in New Zealand, Canada, the USA, and other countries. A fatal injury at work will normally initiate at least four and possibly six regulatory and judicial responses. These include: i) police investigation; ii) workers' compensation claim; iii) government safety investigation; iv) prosecution; v) common law claim;<sup>2</sup> and, vi) coronial investigation. Employers and unions can be involved to varying degrees in each of these processes. The major difference in New Zealand is that the universal coverage for injury afforded by the Accident Compensation Commission eliminates a number of the inequities associated with the workers' compensation law option, most notably covering self-employed workers. Leaving this point to one side it should be noted that employer and union involvement extends the six regulatory responses just mentioned, especially regarding how they respond to work-related deaths and their interactions with workers and families of deceased workers.

Union structure in Australia is primarily occupational but with an increased industry focus due to a wave of amalgamations since the 1970s. Like many other developed countries, union density has declined substantially (from over 50 per cent in the mid-1970s to around 17 per cent by 2013) but continues to vary significantly between industries (Australian Bureau of Statistics, 2008). In the private sector, mining and construction are more strongly unionised than transport and agriculture though all four have experienced declines. Declining membership and changes to industrial relations laws have weakened union access to workplaces, including those following a work-related death (Quinlan & Johnstone, 2009).

Like Canada and the USA, workers' compensation and occupational health and safety (OHS) laws are primarily a state/territory/province responsibility. Like the UK and Canada, work-related deaths and other serious incidents are routinely investigated by OHS regulators who, if detecting a serious breach of legislation, can initiate a prosecution (for an examination of regulator responsiveness to families in cases of work-related death, (see Matthews, Fitzpatrick, Bohle & Quinlan, 2014).<sup>3</sup> While some state/territory OHS laws include special provisions for work-related death and as criminal statutes provide for prison terms (as well as fines and enforceable undertakings), to our knowledge, the gaol penalty has never been imposed. Workers' compensation regimes in Australia are broadly similar to those found in Canada being primarily restricted to employees. The families of self-employed workers can pursue civil litigation. Unlike Canada, access to workers' compensation does not preclude civil action (for damage based on the tort of negligence) by employees or their families in the case of the worker's death, but anti 'double-dipping' provisions mean any common law settlement will be offset by the amount of any payments already made under workers' compensation (for a more detailed account of the administration of workers' compensation and civil claims in cases of work-related death see Quinlan et al., 2015). Some state workers' compensation regimes include premium bonus or penalty provisions so that the costs of a work-related death may have implications for an employer or contractor's compensation premiums, especially in the case of medium-sized firms.

This article seeks to shed light on how employers and unions respond to work-related deaths and the extent to which they support families, not simply based on their own perceptions but also in terms of how representatives of other organisations (insurers, safety regulators, workers' compensation authorities, coronial officers and family support/advocacy groups) view these responses. The study addressed the following research questions:

1. How do employers and unions respond to traumatic work-related death?

2. What are the critical institutional processes and relationships affecting employers and unions following a traumatic work-related death?
3. What are the implications of these processes and relationships for the victims' families and industrial relations more generally?

This study is an initial exploration of a rarely-examined topic and is, therefore, largely descriptive. However, it will be the basis for further qualitative and quantitative research evaluating institutional roles and responses after work-related deaths and their implications for industrial relations and the families of deceased workers.

## Methods

This study used exploratory qualitative methods to explore the procedures and practices implemented to respond to work-related deaths and the extent to which they assisted families. Employer and union responses in relation to initial contact and ongoing response to families, safety investigations and coronial inquests, workers' compensation, and common law proceedings, were sought. Interviews were not only conducted with employer and union representatives but also with representatives of other organisations directly or indirectly involved in these processes, including safety regulators, insurers, workers' compensation authorities, coronial officials, and advocacy/support groups for victim's families. This approach provided a broader, more rounded picture of union and employer responses. An employer/industry body that offered advice to smaller employers also agreed to participate. The research protocol was approved by the University of Sydney Human Research Ethics Committee before the study commenced (Approval 2012/2319). A more detailed description of the methods can be found in (Matthews et. al. 2014).

### *Participants and Setting*

Interviews were sought with representatives from organisations and stakeholders involved in work-related deaths in Australia. Fifty-six managers from government safety inspectorates, government compensation agencies, trade unions, employers, coroner's office, police, and family support and advocacy groups and services were contacted by phone or email and advised of the aims of the study. Agreement was sought for their participation (or that of a nominated representative) in a face-to-face interview held in their local area. In total, 48 managers or representatives agreed to participate (see Table 1).

**Table 1 List of Participants**

<b>Sector</b>	<b>Representative</b>
Government Safety Inspectorate n = 11	Senior managers, including chief inspectors, directors of policy, strategy, infrastructure, enforcement, investigations Senior policy, project and information officers Inspectors
Government Compensation Agency n = 8	Senior managers and directors, including regional managers Assistant directors of policy/planning, case or claims managers/coordinators (including claim agents)
Trade Unions n = 6	State and district secretaries and presidents OHS officers and legal advisers Industry safety representatives Assistant Secretary

Employers in construction, road transport and agriculture, fishing and forestry n = 11	Senior managers, CEOs, state manager and industry association director Safety managers, superintendents, project managers Site safety managers, industrial chaplains
Coroner's Office n = 4	Coroners and senior managers, coroners court and investigation units Coronial associates, police attached to coroner's office
Police n = 1	Officers in charge of crash investigations
Support and Advocacy Groups/Services n = 7	Directors and secretaries

Participants included representatives from government prevention and compensation organisations in four of six Australian states – one state was not approached due to funding constraints and another did not wish to participate. Interviews were also conducted with representatives of employers and trade unions from the four industries that account for approximately 70 per cent of all notified workplace deaths: road transport, construction, mining, and agriculture, fishing and forestry, aside from the mining industry where we were unable to secure an interview. Separate and stringent protocols for conducting research with police in some states prevented us from interviewing all four members of the police force contacted, with the exception of one state. However, as the role of police is largely to conduct an immediate inquiry to rule out any foul play (i.e. homicide), their views were not considered critical to the present focus on employers and union responses. In regards to the coronial office, of the six representatives contacted, we were able to interview four. The sample also consisted of support groups and services – small bodies primarily composed of the families of those killed at work that are interested in ensuring that investigation and prosecution processes better meet the needs of families as well as promoting more effective enforcement of work safety legislation.

Because the sample of government prevention and compensation organisations extended across the four jurisdictions and included various levels (management/policy positions, those involved in prosecutions, claims and field inspectors), we believe it is relatively representative notwithstanding jurisdictional differences in OHS organisation and legislation. All unions covering the four key industries that were the focus of the project (construction, mining, road transport and farming/fishing/forestry) agreed to participate in the project. On the other hand, as the number of interviews undertaken with employers was relatively small and did not extend to all jurisdictions and industries, information from these participants may not be representative. Employers were approached in the four industry groups, and we obtained participants in all with the exception of mining. Obtaining participation from employers proved more difficult. A number of those participating had been closely involved in a recent workplace fatality, others had been aware of an incident but not directly involved and others had no involvement but were aware of the issue as relevant to their industry. An interview was sought and obtained with an industry peak body (an avenue not pursued further because it became apparent peak bodies had little if any involvement in traumatic work-related death).

While employers and unions must deal with the same general issues following a work-related death irrespective of industry, the characteristics of particular industries – including different patterns of industrial relations – will influence responses. The four industries that were the focus of this study exhibit such differences. In the mining industry, large corporate employers tend to predominate (despite the existence of many small mines) and the industry remains relatively highly unionised in Australia. Conversely, notwithstanding the growth of agribusiness, the farming, fishing and forestry industry is dominated by many small self-employed operators and has generally low levels of

unionisation. Construction and road transport fall in between these two extremes, with many large corporate operators (where union membership is concentrated) but also extensive use of self-employed subcontractors and small operators (where union membership is generally low).

At the same time, it is important to recognise that all four industries have been affected by broader changes in the labour market, business practices and industrial relations climate over the past 20 or more years, including a growing use of contract labour/subcontracting and de-collectivisation of industrial relations that has affected OHS by weakening worker participation mechanisms and undermining regulatory protection (Quinlan & Johnstone, 2009). Without ignoring this important qualification, it is arguable that larger employers are more likely to have established policies and practices to deal with situations like work-related death than small employers, and the level of unionisation in an industry or sector will also influence whether families can access support from them.

Social, cultural, and institutional factors may influence participants' perspectives on these issues. However, by sampling strategically across organisations and stakeholders with extensive contextual and situated knowledge of the relevant regulatory and judicial processes, and of working with families of deceased workers, the sample was considered large enough to make comparisons that meaningfully address our first research question.

All participants were provided with a Participant Information Statement and interview protocol prior to the interview date. Written consent was sought prior to the interview.

### *Data collection and analysis*

After participants' written consent was obtained, semi-structured interviews were conducted face-to-face by an experienced researcher. An interview schedule was designed to elicit specific information about the organisations role in work-related death (including the procedures and practices that follow); the nature of the support offered to individuals and families; the nature and timing of information provided, and interactions with, authorities, individuals and families; and the nature of the outcomes for individuals and families. With participants' permission, interviews were audio-recorded, transcribed verbatim, and de-identified. Interviews lasted between 15 and 90 minutes and took place between August 2012 and January 2013.

Interview transcripts were read and analysed separately by two members of the research team who identified, by consensus, initial themes for labelling and sorting the data. Any differences in interpretation or categorisation were discussed and resolved collaboratively, thus, helping to ensure reliability and validity (DeSantis & Ugarriza, 2000). A framework analysis was then carried out in which the substantive content of the interviews was systematically indexed and summarised. This analysis was done using NVivo software and was applied across the entire data set. This generated an extensive list of approximately 50 descriptive categories grouped under the following: i) policies, practices and roles; ii) nature of support; iii) nature and timing of information; iv) nature and timing of interactions; v) consequences and impacts of workplace deaths; vi) legal processes; and, vii) adequacy in meeting needs. Following this, a more focussed analysis was carried out in which associations within and across categories were mapped and synthesised and patterns or differences within the data identified in order to facilitate in-depth investigation of union and employer responses to work-related death (Mays & Pope, 2000; Ritchie & Spencer, 2002). Findings are reported based on employer and union responses regarding: i) initial response and ongoing contact; ii) workers' compensation and common law, iii) investigation and prosecution, and, iv) coronial inquests.

## Findings

### *Employers*

#### 1. Initial response and ongoing contact

For employers, one pressing question following a work-related death concerns how the organisation should respond, including if and how they should contact the family. In most cases, the police are called to the scene to carry out a preliminary investigation (to rule out a possible homicide). While the police are normally the first to contact the family, especially in small communities, the first contact may also be from fellow workers or friends, as reported by one agricultural employer. Given their size and the nature of the industries, it was not surprising that all representatives of large employers in construction and road transport indicated that their organisation had a formal documented protocol for dealing with emergency situations. These protocols included work-related death but, unlike those of safety regulators, there were no dedicated elements for work-related death. The protocol typically took the form of a crisis-management procedure by which designated managerial staff assembled to coordinate, manage, and post-manage serious incidents. The procedure included securing the site, managing and disseminating information to external organisations and the media, coordinating the Employee Assistance Program, and in some cases, contacting the family.

However, protocols for contacting the family were neither consistent between organisations nor always apparent to managers at a worksite. Most construction industry interviewees were unaware of any formal protocols or procedures for contacting families, considering them the domain of Human Resources, counsellors or senior management. In two organisations, the Managing Director took responsibility for contacting the family. However, other employer representatives in construction and other industries indicated they had received legal advice not to contact the family. Other respondents, including government inspectorates, unions, and lawyers acting for unions, also stated that employers were increasingly discouraged by their lawyers from contacting families in case their statements were as an admission of fault or used in evidence in legal proceedings – either civil litigation, prosecution by the government safety regulator or a coronial inquest. The risk of civil litigation for common law damages was especially high where the deceased worker was a self-employed subcontractor because the family was generally excluded from the only other option, namely a workers' compensation settlement.

The legal advice is often for the company to say nothing to the family. Ninety per cent of labour on construction projects is through subcontractors so the builders themselves are not the employer of the injured or the worker whose fatality has occurred... So contacting the family of a subcontractor... it creates antagonism. There'll always be an element of blame from the injured family, not only against the employer, but against the big builder, against the head contractor. (Employer #10)

Notwithstanding these issues, some individuals did contact families to offer support, including direct financial support or organising workplace donations. This discrepancy is indicative of a tension between the professional or organisational and the personal responses to work-related death. On one hand, there is pressure to withhold information or to not act in ways that might appear to be an admission of guilt or legal liability to protect the interests of the company. There is, nevertheless, compassion for the family, which was most evident in an interview with the Chief Executive Officer of a regional, family-owned agricultural company who spoke of the challenges of balancing his



responsibility to the company, over both the long and short term, with his responsibility to the family. Having provided emotional and financial support to the spouse over a period of 18 months, during which a close friendship developed, he described how this relationship deteriorated once the prosecution judged the company responsible for the death.

I think that the legislation and the stricter liability nature of it was one of the things that turned [spouse] against us a bit more because I really noticed the change in her once she saw the charges from [government safety inspectorate] that [company] was responsible.... It wasn't just the charges... but the prosecution brief. She took that as being, well you know, [company] was responsible and that's what the court says... [That] turned her behaviour around, at least to me. (Employer #9)

One transport employer used chaplains to facilitate balance between professional and personal roles. The chaplaincy team's approach was for the family to control the process (although support was provided to work colleagues of the deceased), and there were clear procedures for receiving families if they decided to attend the site of the incident, or at the hospital. An initial offer of support was made to the family, which was followed up at regular intervals.

It's that fine line between harassing someone – saying, do you need help – and actually recognising that they're on this kind of rollercoaster and they don't know what help they might need. So we'll do that initial, 'we're here to support you however you like' and then at 24, 48 [hours] we'll be saying, 'do you now need some support with' – and actually being more concrete in the offers. (Employer #11)

As a result of their professional involvement in funerals and memorial services, chaplains had the opportunity to meet with families over the longer term to check how they were coping and to anticipate future needs. This included practical tasks like organising help around the garden or providing career guidance for teenage children. Chaplains could also act as a referral point for those requiring specialised services such as grief counselling or drug and alcohol services.

## **2. Workers' compensation and common law**

While donations from employers, unions or workplace collections might help some families, the primary source of financial support for families is workers' compensation, which includes statutory payments in the case of work-related death plus ongoing payments to dependent spouses and (more especially) children. In Australia, families can also sue for damages at common law, which may result in a higher payment than workers' compensation (settlements are adjusted to account for workers' compensation receipts to prevent 'double-dipping'). A successful common law claim requires proving the death resulted from negligence by the employer or another party. It is a more problematic and lengthier process than workers' compensation. However, as most self-employed workers are excluded from workers' compensation cover, a common law damages claim is usually the only option for their families.

Most employers spoke at length about company-specific policies and schemes offering direct financial assistance to families rather than about workers' compensation *per se*. This response reflected the fact that after a claim is lodged the employer is no longer involved – the processing and outcomes are the responsibility of the workers' compensation authority or the private insurer licensed by them. Nonetheless, a common concern amongst employer representatives was the inability of the families of

self-employed subcontractors to claim workers' compensation and the financial pressures on them that result. Several employers also referred to the need to provide more immediate support while claims were being determined. The industry association said on occasion it approached the workers' compensation authority when a claim was rejected:

[So] say they're not helping a family that we're trying to push a claim through [for] – we enquire as to their processes and procedures. There have been other occasions when we've said 'this family is destitute and you need to process the claim as quickly as possible' and they've been very good in that space. (Employer #10)

The chaplains of one employer also sought to assist vulnerable families with their compensation claims:

If you're functioning 100 per cent, those processes are fraught. If you've just lost the person who may well have been the one who made all the decisions and knew about that stuff, you're in deadly situations. So sometimes for us, that means going, sitting with someone during the compensation hearings. It might mean going and helping them choose a lawyer to represent them. It might mean we provide them with support. (Employer #11)

These responses reflect a recognition of the problems associated with the growth of subcontracting arrangements as well as recognition of the financial stress experienced by families. (Matthews, Bohle, et al., 2012). The families of self-employed workers typically found in subcontracting arrangements are generally excluded for accessing workers' compensation and because these workers are seldom unionised must mount their own claims at common law – an often lengthy and problematic process (Quinlan, et. al. 2015).

### **3. Investigation and prosecution**

The investigation process following a death can take six months or more, and court proceedings (if pursued) may not occur until a year or much longer after the incident. While these processes are occurring, families often have limited information on the circumstances surrounding the fatality. Employer representatives referred to the constraints imposed by the legal process on their ability to communicate to families or their own workforce. One stated:

I think there should be some sort of open reporting culture there. I can understand why companies don't do it, because suddenly as soon as an occurrence happens they're put under legal privilege (Employer #2)

Similarly, an industry organisation representative stated:

I think people are entitled to know what happened... How did my father die, how did my son die? ... The causation stuff is terribly important. Unfortunately, there's legal privilege around that and even the government's investigation, they don't want to tell anybody what they have found in their inquiries. So you have this issue of timing and can you give general information to a family. My view is you can give very general information to a family to say how the law works... Families are entitled to know the process. (Employer #10)

Interestingly, several believed the situation had been exacerbated by the more conspicuous role played by corporate law firms – a concern shared by other interviewees, including government safety regulators, unions and support groups.

The investigative and prosecution process also exacted a toll on the employing organisation. One interviewee recounted the personal, interpersonal, and organisational impacts it had:

In terms of the organisation and some of the people – you just notice the toll it takes... one of the things it did was pit people against each other in the organisation who were trying to work out what happened and the [government safety inspectorate] uses someone's story and throws out someone else's – we've got some lingering difficult relationships internally because of that. (Employer #9)

#### **4. Coronial Inquest**

Of the employer representatives interviewed, only two said anything about their involvement in the coronial process. One was a safety facilitator required to attend fatalities and prepare documents for submission to the coroner's office. The other had attended a coronial inquest concerning a death at the workplace he managed. Contrary to the views of some union representatives (see below), the manager did not believe the coronial process had fully disclosed the evidence surrounding the workplace death:

There was some information about the plan of work for the day and who was instructed to do what and why they were doing it and what they were doing. We just found, and this followed through to the prosecution, that some of that information wasn't asked or didn't come out or wasn't refuted by someone. (Employer #9)

The employer representative believed the failure to capture the 'whole story' surrounding the workplace death resulted in dissatisfaction amongst those employees who gave evidence to the inquest and also influenced the subsequent prosecution by the safety regulator (in some jurisdictions a coronial inquest can only occur after a prosecution is finalised).

#### ***Unions***

Before describing union responses, it is important to provide some contextual background. All four unions are large and all had taken some active involvement in work-related death. The New South Wales (NSW) branches of both the mining (predominantly coal mining) and construction divisions of the Construction, Forestry, Mining and Energy Union (CFMEU) have a history of providing support, including financial support, to the families of members killed at work (and sometimes non-members) and had either erected or sponsored memorial walls of those killed. The memorial wall of the northern NSW division of the CFMEU mining division at Cessnock has over 1800 names of mineworkers who have died since the early 1800s. The NSW branch of the construction division of the CFMEU has supported a formal group of families for those killed at work – not just union members or those killed in construction – including organising an annual construction safety dinner where employers attend to raise money for the support group. The NSW branch of the Transport Workers Union (TWU) also supported a formal family group about a decade ago as part of a campaign to improve truck-driver safety and has continued to maintain contact with families. Like the CFMEU, it supported a memorial of truck drivers at Tarcutta on the Hume highway where a ceremony is held each year. Some employers

are also involved in this ceremony. For its part, the Victorian branch of the Australian Workers Union (AWU), which represents metalliferous miners and agricultural workers, became heavily involved in a fatal rock fall at the Beaconsfield gold mine in Tasmania in 2006 (one mineworker was killed and two entrapped for 11 days), and provided representation for the family of the deceased worker in the subsequent coronial inquest.

The activities above, especially of the CFMEU, probably represent a stronger level of engagement with families than is typical but do appear to reflect a wider trend in which unions are seeking to build broader community engagement and networks – a point taken up later in this article.

## 1. Initial contact

The unions interviewed for this study lacked documented protocols to deal with workplace death but all had established procedures, to varying degrees, known to the officials involved, from union secretaries through to organisers. These procedures were based on union structures, the expertise or experience of particular officials and longstanding practices, particularly regarding workers' compensation and civil litigation. At the same time, respondents believed the diversity of their membership and sensitivity to different family circumstances made a 'one size fits all' protocol unfeasible when it came to initial contact. In the case of the construction union, for example, initial contact was often made through a work colleague out of respect for the privacy of the family.

Once initial contact had been made, the response of most unions was relatively consistent. It involved the provision of practical support for families of the deceased, including legal and counselling supports as well as advice about, and assistance in, accessing financial benefits. All four unions had contracted specialist legal firms to pursue common law damages claims or disputed workers' compensation entitlements. The provision of more immediate financial support also played a prominent role in union responses. This support ranged from a substantial payment of around A\$100,000, in addition to other financial receipts from workers' compensation or other sources, from the fighting fund of the miners' union, to support with journey claims no longer covered by workers' compensation (in the case of the transport and construction union), and organising donations from members (including multi-workplace levies or subscriptions). The construction and mining unions had also facilitated payments by employers or others to self-employed contractors and other non-members.

Unions can be a conduit through which the family can find out the circumstances of the death and demand measures to prevent a recurrence. Representatives of other bodies, including safety regulators, endorsed the value of unions' role as facilitators of information and support to families. One safety regulator argued that providing information to families via unions was a way to avoid *sub judice* issues in a pending prosecution before adding.

We don't volunteer information... but if they contact us on behalf of their members .... That's when we engage with the union – usually the health and safety officer on site. We walk with them around the site and let them know what we think and we develop the relationship at that point. (Government Safety Inspectorate #5)

Unlike other organisations whose roles require impartiality, such as OHS regulators, or may even entail a conflict of interest, such as with employers, unions can unashamedly advocate on behalf of the family. In addition to empathy, representatives saw a close alignment of the union's goals and activities with those of families. This view is consistent with previous research that found that unions were the

only organisations whose activities were viewed in a consistently positive light by bereaved families (Matthews, Quinlan, et al., 2012).

The capacity and willingness of unions to help families can vary markedly however. Using a range of sources, including their members at the workplace who witnessed the incident, contacts in other organisations and familiarity with documentary sources, unions can provide families with information on the circumstances of the death. This task can prove taxing for unions, such as the TWU, AWU and CFMEU (Construction Division), which cover large, remotely located or disparate (in terms of occupation) groups of workers and with low or patchy membership. The CFMEU (construction), for example, was in a stronger position to provide assistance in the case of a death on a large construction site than one on a housing site (especially one in a small town). The TWU and AWU face similar challenges.

On the other hand, the capacity of the more highly unionised CFMEU (mining division) to provide this information was enhanced by the fact that in both Queensland and NSW coal mine safety legislation empowers its safety representatives, including full-time representatives paid for by the union, to undertake inspections/investigations and to be kept informed of worksite investigations undertaken by the company. Unlike their counterparts in other industries, the safety officials in the CFMEU mining division must also be informed of notifiable incidents at a workplace, which include fatalities. Interviews with a CFMEU Industry Safety Representative indicated that they normally liaised with the branch president and secretary, who then contacted the family to offer assistance. The mining industry regulations provide a model which could be used to facilitate the more rapid release of information to families via unions in other industries (Matthews, Quinlan, et al., 2012).

Several union representatives argued that having to deal with an ethnically and socially diverse membership strengthened their ability to deal with challenging issues like complex family structures:

Family structures are complex at times. Unions are well-placed generally to deal with those complexities because they understand diversity. We understand the breadth of our membership; not in an intimate way, but in a far more intimate way than their employers generally do, and lawyers generally do, or regulators generally do. So we have a role to play there in delivering those sorts of support networks and services. (Union #5)

As well as providing emotional support and information about rights and entitlements to families, union support can extend to assistance with funeral arrangements. Long-term contact and support was also raised by some participants. While long-term relationships had developed as a result of the campaigning work of some family members, often contact lapsed once legal support had been provided and families were satisfied with it.

I think we could do better at ensuring that there is a bit of long-term support for these families going forward; that they are not left to fend for themselves. After they are given their lump sum it's like, well there you go. (Union #4)

The issue of long-term support was also connected to the broader role that unions could perform and the benefits of a more strategic approach. While a decline in union membership and the growth of non-unionised workplaces have severely challenged conventional union activity, the provision of these supports has afforded unions an opportunity to demonstrate the broader community service role they can perform. This has a ripple effect beyond the families immediately assisted, especially where a network has been built. Two measures identified in the introduction to this section may assist this

process. First, annual memorial services have provided an ongoing point of contact between unions and families. This activity was endorsed by representatives of other bodies interviewed, not only victim support groups but also some safety regulators. Second, and perhaps more importantly, several unions, most notably the construction division of the CFMEU, have sponsored or supported family support groups, which in turn have become powerful community advocates for improved safety and workers' compensation (Matthews, Quinlan, et al., 2012). It is noteworthy that several employers interviewed had invited family members involved in advocacy groups to address their workplaces about the importance of safety.

## **1. Workers' compensation and common law claims**

As noted earlier, work-related death often has serious financial repercussions for families that can be compounded by unfamiliarity with seeking workers' compensation or making claim at common law. Unions play an important and often unrecognised role in referring families to experienced law firms to advise them and, if necessary, assist them pursue their legal entitlements. The vast majority of families opt to pursue a workers' compensation claim rather than civil litigation because it is quicker and their financial entitlements are clearly specified. Further, as one union official indicated, civil litigation is also more emotionally taxing:

Common law, by definition, involves an inquiry, a very close examination of what the cause of the death was and if it could have been prevented. It's obviously a lot more stressful for the defendants involved because there's the consideration of what could have been done to avoid the death. (Union #6)

Given the complexities of subcontracting relationships, experienced legal advice was, if anything, even more critical:

The person may be self-employed, they may be a contractor, but it may be that somebody else is potentially at fault and has liability. For example, the head contractor or one of the other major contractors may have caused the accident, but it requires an experienced lawyer to investigate the full circumstances to see if there is a case there for the family. (Union #6)

One problem in this regard was that relatively few self-employed workers belong to unions. Nonetheless, the extent of subcontracting in some industries, such as construction and road transport, and declining union membership more generally, has significantly constrained unions' capacity to assist workers – a point recognised by both support groups, who commonly did include the families of contractors, and workers' compensation agencies.

Because all the contractors aren't members of the unions the union doesn't give them any support, like as if they were a union member. They're compassionate towards them, of course. They're a bit like insurance. You don't pay your premium, you don't get the support. (Support Group/Service #5)

If they're an employee, there's a chance they belong to a union and that the union will actually give them a lot of advice with the [compensation claim] – and [also] if they have to go for a common law settlement... But if they're self-employed, they're almost never a union member, so they don't have any resources to fall back on at all for advice. (Government Compensation Agency #4)

In addition to assisting claimants, unions also advocated improvements in workers' compensation benefits and opposed reductions in benefits, for example in relation to journey-related claims. Like several employer representatives, union officials interviewed referred to the severe financial strain that work-related death placed on families. In at least one case, unions received influential support from a family support group in securing improved lump sum benefits and changes to dependency requirements.

## 2. Investigation and Prosecution

Unions may carry out their own inquiries following a workplace death, provide information to government safety inspectors, and attend court hearings, often with the family. Most union interviewees expressed confidence in government safety inspectors, indicating they had good working relations with inspectors and recognised the need for independence in the investigation and prosecution process. One interviewee did question how important information was withheld from them:

So when there is a fatality and the regulator is involved – and we know the inspectors and the investigators; we know them personally. We ask them questions about – ‘what can you tell us?’ The shutters come down. We think that’s unfortunate because the regulator actually knows that we have exposure to these issues; we have experience. Whereas they also know that usually the organisation they’re dealing with has never encountered it before. (Union #5)

Like some employers, union representatives were critical of the increasingly conspicuous role of law firms in dictating responses, including restricting access to information to anyone other than the regulatory authority. Like some managers, they believed this approach had potentially adverse effects on OHS:

The flaw in that position is that [any] immediate threat emerging from that incident that they may be aware of, that would be applicable to other workplaces tomorrow, doesn't come out until 18 months from now. I want to know what it is that might kill some of my members in workplaces – and I want to tell them, ‘here’s an alert; be wary of this’. (Union #5)

Withholding information can have potential repercussions for the family, who often find it increasingly difficult to obtain information about the exact cause(s) and nature of the death, or about processes taking place (Snell & Tombs, 2011; Matthews, Quinlan, et al., 2012; Matthews et al., 2014). Union representatives also expressed concern about delays in court proceedings resulting from the use of technical objections by law firms. This point was echoed by safety regulators, one of whom cited a recent case in which technical appeals reached the High Court (where they were rejected) and the actual prosecution trial was held up for over a year.

Conversely, unions were critical of the failure of safety regulators to always keep families informed of proceedings or to appreciate their desire for accountability and justice.

I've heard [of] situations where people don't even realise prosecutions have gone to court... One of the things that I think the authorities don't get is, it's not just about the money or the fine, it's actually having a process that recognises something really bad has happened

and [that] we are doing the best we possibly can to get some justice at the end of the day.  
(Union #4)

### **3. Coronial Inquest**

Unions indicated they tried to ensure officials or their legal representatives attended coronial inquests, made submissions to them on occasion (in one road transport case this evidence was cited at length in coroner's findings), and supported family members. A major union concern was the falling number of workplace deaths that were subject to a full coronial inquest. Whether a full inquest is held depends on various factors but resourcing was seen to play an important role.

There are two reasons why you see less workplace deaths in coroner's courts. One is, I believe, the coroners haven't got the resources they would like to have... Two, there is, I feel, a push from [government safety inspectorate] to turn these into paper investigations and [to] keep the coroner out of it. (Union #6)

Unlike most investigations in which there is no subsequent prosecution, coronial findings are made public and were seen to provide information not found in a safety investigation:

[The families] just want to know what happened. I believe that the coronial process actually does play a very important role in answering some of the family's questions... Faced with the death of a loved one most people do want to know what happened or at least know what the last person who saw them can tell you about their situation before the death. (Union #6)

Because coronial findings can also make recommendations aimed at preventing similar deaths, unions saw coronial inquests as performing an important role in delivering some level of justice to the family. One interviewee claimed the reduction in the number of workplace deaths subject to coronial inquests resulted in less media coverage and understanding of workplace death in the community.

### **Discussion: Putting the findings into context**

This study examined the views of employers and unions regarding their responses to work-related death and the problems experienced by surviving families. The findings are firstly discussed in the context of criminal law processes that follow a work-related death. They are then viewed in light of their relevance for industrial relations research and policy.

In regard to set procedures for dealing with work-related deaths, larger firms had formal protocols for dealing with emergency situations that were not specific to work deaths but were used in these circumstances. In some cases, these protocols included making contact with families. Although unions lacked written protocols they did have well-established, although unwritten, procedures that could accommodate differing circumstances, including methods of communicating with mixed families. Three of the four unions – and the CFMEU in particular – had made efforts to broaden their engagement with families through activities like memorial walls or parks, aiding support groups and offering some assistance to families of non-union members. To a large degree, the views of union and employer representatives about their role and the problems encountered were confirmed in interviews with representatives of other organisations, such as government agencies and support groups.



Significant areas of agreement between employer and union representatives about the problems experienced by families following a workplace death were identified. These included the length of time it took for issues like investigations and coronial inquests to be resolved, the financial strain on families, especially where the worker was self-employed, and problematic role of legal firms in terms of the release of information. These problems are common to families experiencing a sudden death (see also Malone, 2009; Riches & Dawson, 1998) and stem from post-death formalities that are shaped by legal rules that pursue broad social objectives rather than the needs of families (Gunningham, 2007). While some employers and unions had developed ways of supporting families with these problems (e.g., one large firm had a chaplain service that could assist families), there was no evidence that these initiatives were widespread practices. Whether union and employer responses in New Zealand are similar to those found in this study and the effect of a universal accident compensation scheme in terms of the financial strain on families is worthy of investigation.

There were also important differences between employers and unions, notably in terms of contact with the family (and even whether it should occur in the case of the employer) and the more central role unions played advising and supporting families. Given employers' roles and responsibilities to the legal system following a work-related death often limited their ability to make contact with families, these findings were not unexpected. Unions and employers also had differing views on the value of investigations and prosecutions by safety regulators and coronial inquests (for example, see Schofield, Reeve, & McCallum, 2009; Gunningham, 2007), formal processes that are known to be problematic yet important for families in seeking information, involvement and justice (Matthews et al., 2014). These differing views reflect the wider debate about the role of prosecution in OHS deterrence and prevention, and the often forgotten retributive functions of the prosecution that helps to meet the legitimate needs of families and communities for accountability and justice (Gunningham, 2007).

The adversarial nature of the legal processes following a sudden death and the impact they have on employers, managers, workers, and families have been previously reported in the literature (Matthews et al., 2014; Schofield, Reeve, & McCallum, 2009; Riches & Dawson, 1998; Malone, 2009; Urban Ministry Network, 2000). An adversarial legal approach not only limits contact between employers, safety inspectorate, and families but has been reported as aggravating conflict between parties (King, 2006). For this reason, the value of a restorative justice approach following work-related deaths (Brookes, 2009; Gunningham, 2007; Braithwaite, 2002) is gaining traction in Australia (King, 2006). Restorative justice provides opportunities for parties to discuss what happened, how people were affected, and what needs to be done to repair or make amends for the harm, to make sure it does not happen again, and to bring about positive changes for all those concerned. This approach is particularly relevant given the prosecution of approximately 50 per cent of work-related deaths in Australia (SafeWork Australia, 2012).

Having raised these points, this study is only the first step in understanding employer and union responses to traumatic work-related deaths and to surviving families, and its findings should be treated with caution. Most of the employers interviewed were from large organisations and this, together with the hazardous nature of the industries considered, means it is difficult to generalise the findings. Nonetheless, the study provides some guidance for future research and it also raises issues of wider significance to the field of industrial relations.

In terms of the relevance of the study to industrial relations research and policy debates, several points can be made. First, some of the findings reflect well-known differences in terms of industry features, firm size, and union presence as well as general trends, particularly the growth of self-employment/subcontracting and declining union density. Nevertheless, while the effects on working

conditions of subcontracting have been extensively documented in the industrial relations literature (see for example, Sobczak, 2004), this study points to the profound effects this has on the families following work-related death in terms of access to financial and other support. Of course, this point has broader relevance to the families of self-employed workers experiencing serious but non-fatal injuries. It highlights an important and growing gap in the social protection regime resulting from changes to work arrangements over the past 30 years (Quinlan & Mayhew, 1999). As this regulatory gap affects industrial relations institutions and processes, it warrants greater attention from industrial relations scholars.

Second, this study provides evidence about an area of union activity that, aside from some treatment of workers' compensation, has received little attention in the industrial relations literature. To varying degrees, unions provide an important set of social protection activities, including assisting families secure workers' compensation or common law settlements, obtaining information on the circumstances of the death and advocating on their behalf during the investigation and coronial inquest. The conflicts of interests or role that occur at work over issues, such as wages and job security, extend to OHS, including what happens after work-related death. In the latter case, notwithstanding some areas of agreement, unions become advocates for the family in dealing with employers and government agencies, such as safety regulators, who have a different and sometimes conflicting agenda. The labour movement's interest in family related issues is longstanding (as is well evidenced, for example, in public inquiries into labour conditions in the UK, Australia and elsewhere in the late 19<sup>th</sup>/early 20<sup>th</sup> century) but has taken on new forms as working arrangements and social conditions and expectations have changed. One example of this is union involvement in contemporary debates on family/work balance (see for example, Rigby & O'Brien-Smith, 2010). On the one hand, this study indicates that, as in other areas, declining union density is eroding their capacity to represent the families of those killed at work. On the other hand, the study also found that some unions in particular were attempting to build a broader community relationship through their activities in this area. This activity can be seen as another example of the wider social campaigning and networking in OHS and other areas that could provide avenues for union renewal (Jarley, 2005; Quinlan & Sokas, 2009).

## **Conclusion**

Traumatic work-related death remains a serious issue even in developed countries, such as Australia, Canada, and the USA. The incidence of work-related death remains significantly higher in four industry sectors – farming, fishing and forestry, mining, construction and road transport. In these industries, in particular, employers and unions are likely to be aware of this risk, if not actual events (certainly our interviewees were). Nonetheless, the impact of work-related deaths on families and how institutions deal with these events has received little attention from researchers.

Within industrial relations and other disciplines, the way that unions and employers deal with traumatic injuries and fatalities in the workplaces they cover has been neglected, apart from studies examining struggles over workers' compensation or safety. Though important, workers' compensation and safety are part of a wider array of issues/processes, organisations, groups and individuals that unions and employers must address following a serious injury at work. While families may become involved in cases of serious injury where the worker dies, the impact on the family is especially acute and also entails their direct involvement in some institutional processes. Further, these processes involve a complex array of economic, social and human considerations that both unions and employers must address. This study sought to provide insights into these interactions by examining employer and union responses to work-related death in the four industries examined. One significant finding was that the

threat of common law liability and increased role of corporate law firms was a significant barrier to employer response. Another significant challenge to both employers and unions were the the delays and complexity of the Australian workers' compensation system, and the complicating situation regarding self-employed workers whose families were large confined to the common law option. Another finding was the importance role played by unions in advising families and helping them to navigate this system. Unfortunately, with some exceptions this was only available when the worker was a union member. While not explicitly addressed by this study, the decline in union density and rise of subcontracting/self-employment is likely to deny this input for a large number of workers. At a more positive level, our study also found union involvement in social networks which aimed to represent and assist families extended the reach of assistance to non-union workers.

## References

Alexander, D. (1990). Psychological intervention for victims and helpers after disasters. *British Journal of General Practice*, 40, 345-348.

Alexander, D. (1991). Psychiatric intervention after the Piper Alpha disaster. *Journal of the Royal Society of Medicine*, 84, 8-11.

Anderson, V.P., Schulte, P.A., Sestito, J., Linn, H., & Ngyuen, L.S. (2010). Occupational Fatalities, Injuries, Illnesses, and Related Economic Loss in the Wholesale and Retail Trade Sector. *American Journal of Industrial Medicine*, 53(7), 673-685. doi: 10.1002/ajim.20813.

Australian Bureau of Statistics. (2008). *Work: Trade union members*. Retrieved from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Chapter7202008>.

Braithwaite, J. (2002). *Restorative Justice and Responsive Regulation*. Oxford: Oxford University Press.

Brookes, D., (2009). *Restorative justice and work-related death: Consultation report*. Melbourne: Creative Ministries Network.

Dembe, A.E. (2001). The social consequences of occupational injuries and illnesses. *American Journal of Industrial Medicine*, 40(4), 403-417. doi: 10.1002/ajim.1113.

DeSantis, L., & Ugarriza, D.N. (2000). The Concept of Theme as Used in Qualitative Nursing Research. *Western Journal of Nursing Research*, 22(3), 351-372. doi: 10.1177/019394590002200308.

Dorman, P., & Hagston, P. (1998). Wage compensation for dangerous work revisited. *Industrial and Labor Relations Review*, 52(1), 116-135.

Gunningham, N. (2007). Prosecution for OHS offences: deterrent of disincentive? *Sydney Law Review*, 29(3), 359-390.

Holland, P., & Pyman, A. (2011). Trade unions and corporate campaigning in a global economy: The case of James Hardie. *Economic and Industrial Democracy*, 33(4), 555-579.

Hyatt, D., & Kralj, B. (2000). The impact of representation and other factors on the outcomes of employee-initiated workers' compensation appeals. *Industrial and Labor Relations Review*, 53(4):665-683.

ILO, International Labour Organization. (2003). *Safety in numbers: Pointers for a global safety culture at work*. Geneva: International Labour Organization

Jarley, P. (2005). Unions as social capital: Renewal through a return to the logic of mutual aid? *Labor Studies Journal*, 29(4),1-26.

King, M.S. (2006). Therapeutic jurisprudence in Australia: New directions in courts, legal practice, research and legal education. *Journal of Judicial Administration*, 15, 129-141.

Kirsh, B., & McKee, P. (2003). The needs and experiences of injured workers: A participatory research study. *Work: A Journal of Prevention, Assessment and Rehabilitation*, 21(3), 221-231.

Lee, G. (1994). Death in the workplace. *AAOHN Journal*, 42(12), 590-594.

Lippel, K. (2007). Workers describe the effect of the workers' compensation process on their health: A Québec study. *International Journal of Law and Psychiatry*, 30(4-5), 427-443. doi: <http://dx.doi.org/10.1016/j.ijlp.2007.06.013>.

Malone, L. (2009). Supporting people bereaved through homicide. *Bereavement Care*, 26(3), 51-53.

Matthews, L.R., Bohle, P., Quinlan, M., Rawlings-Way, O. (2012). Traumatic death at work: Consequences for surviving families. *International Journal of Health Services*, 42(4), 647-666.

Matthews, L.R., Fitzpatrick, S.J., Bohle, P., & Quinlan, M. (2014). Investigation and prosecution following workplace fatalities: Responding to the needs of families. *The Economic and Labour Relations Review*, 25(2), 253-270.

Matthews, L.R., Quinlan, M., Rawlings-Way, O., & Bohle, P. (2012). The adequacy of institutional responses to death at work: Experiences of surviving families. *International Journal of Disability Management*, 6(1), 37-48.

Mays, N., & Pope, C., (2000). Assessing quality in qualitative research. *British Medical Journal*, 320, 50-52.

Quinlan, M., Bohle, P., & Lamm, F. (2010). *Managing Occupational Health and Safety: A Multidisciplinary Approach* (3rd ed.). Melbourne: Palgrave-Macmillan.

Quinlan, M., Fitzpatrick., S.J., Matthews, L.R., Ngo, M., & Bohle, P. (2015). Administering the cost of death: Organisational perspectives on workers' compensation and common law claims following traumatic death at work in Australia. *International Journal of Law and Psychiatry*, 38(1), 1-10.

Quinlan, M., & Johnstone, R. (2009). The implications of de-collectivist industrial relations laws and associated developments for worker health and safety in Australia, 1996-2007. *Industrial Relations Journal*, 40(5), 426-443.

- Quinlan, M., & Mayhew, C. (1999). Precarious employment and workers' compensation. *International Journal of Law and Psychiatry*, 22(5&6) 491-520.
- Quinlan, M., & Sokas, R. (2009). Community campaigns, supply chains and protecting the health and wellbeing of workers: Examples from Australia and the USA. *American Journal of Public Health*, 99(Supplement 3), s538-546.
- Riches, G., & Dawson, P. (1998). Spoiled memories: Problems of grief resolution in families bereaved through murder. *Mortality*, 3, 143-159.
- Rigby, M., & O'Brien-Smith, F. (2010). Trade union interventions in work-life balance. *Work Employment & Society*, 24(2), 203-220.
- Risby, T., de Silva, H.M., & Tong, A. (2007). *Road crash cost estimation: a proposal incorporating a decade of conceptual and empirical development*. Canberra: Department of Transport and Regional Services
- Ritchie, J., & Spencer, L. (2002). Qualitative data analysis for applied policy research. In A.M. Huberman and M.B. Miles (eds.), *The qualitative researcher's companion* (pp. 305-330). Thousand Oaks, CA: Sage.
- SafeWork Australia. (2012). *The cost of work-related injury and illness for Australian employers, workers and the community: 2008-09*. Retrieved from <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/660/Cost%20of%20Work-related%20injury%20and%20disease.pdf>
- SafeWork Australia. (2015). *The cost of work-related injury and illness for Australian employers, workers and the community: 2012-13*. Retrieved from <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/940/cost-of-work-related-injury-and-disease-2012-13.docx.pdf>
- Schofield, T., Reeve, B., & McCallum, R. (2009). Deterrence and OHS prosecutions: prosecuted employers' responses. *Journal of Occupational Health and Safety Australia and New Zealand*, 25, 263-276.
- Sinclair, A., & Haines, F. (1993). Deaths in the workplace and dynamics of response. *Journal of Contingencies and Crisis Management*, 1(3), 125-137. doi: 10.1111/j.1468-5973.1993.tb00015.x.
- Snell, K., & Tombs, S. (2011). How do you get your voice heard when no-one will let you? Victimization at work. *Criminology and Criminal Justice*, 11(3), 207-223. doi: 10.1177/1748895811401985.
- Sobczak, A. (2004). The social responsibility of the firm: Menace or opportunity for labour law? *Relations Industrielles*, 59(1), 26-51.
- Underhill, E., & Quinlan, M. (2011). How precarious employment affects health and safety at work: The case of temporary agency workers. *Relations Industrielles*, 66(3), 397-421.

Urban Ministry Network. (2000). *“I think about him every day”*: Transforming the grief of work-related death into renewed workplace safety. St. Kilda: Creative Ministries Network.

## Notes

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<sup>1</sup> This article presents results from the first phase of a multi-method study of institutional responses to workplace death using data from 48 in-depth interviews with organisations involved in workplace death in Australia. Specifically, it examines the attitude and responses of unions and employers to traumatic work-related death in four industry sectors with a relatively high incidence of such fatalities: road transport, construction, mining, agriculture fishing and forestry. The aim was to identify critical institutional processes and relationships and their implications for industrial relations and for victims' families. To this end, employer and union responses were examined, regarding initial contact, workers' compensation, investigation and prosecution, and the coronial inquest. Protocols and supports to deal with these events, and the extent to which they assisted families, were examined. In addition, the study explored how other relevant institutions, such as safety inspectorates and support and advocacy groups, viewed union and employer responses.

Results indicated that employers tended to have documented protocols for responding to serious incidents, unions had established responses, but they were generally not formally documented. The responses of unions involved the provision of clear practical support to families, including legal and counselling supports, information provision and assistance in accessing financial benefits. Contact with families was also a feature of employers' responses, especially the larger organisations that employed chaplains, but concern was also expressed that contact with families may be inappropriate or legally problematic. Employers and unions both raised concerns about how legal processes following a death delayed families and employers accessing information on the circumstances that led to it and the impacts of delays on occupational health and safety and the health and wellbeing of families and workers. These findings suggest that employers and unions could play different, but constructive, roles following a work-related death. More research is required on how employers and unions deal with fatalities and serious injuries/illnesses arising from work.

<sup>2</sup> A second option available in terms of securing monetary redress following injury or death at work in Australia and some other countries – and one especially important to those excluded from workers' compensation such as most self-employed workers – is for the family (in the case of traumatic work-related death) to pursue a claim for damages at common law, usually under the tort of negligence or breach of contract, against the person or organisation held responsible for the worker's death. Unlike workers' compensation, this is a fault-based remedy where the level of entitlement is not specified but decided on a case by case basis according to general rules.

<sup>3</sup> In the state of New South Wales unions too have had the right to initiate a prosecution though limited use was made of it and there have been no such cases to our knowledge in the last five years.