Restorative Justice and Work–Related Death: Consultation Transcripts

Dr. Derek Brookes
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Introduction

This document is the companion volume to *Restorative Justice and Work-Related Death: Consultation Report* (Creative Ministries Network, 2009). It contains the full transcripts of the interviews upon which the analysis in that Report was based.

For an explanation of its contents and purpose, please see Section A. of the Report.
1. Bereaved Families

**TA1 | ‘They just have no human feelings’**

I’m not really an angry person anyway. I’ve never – I’ve been in – I was really angry in the beginning because a few things that happened. Not with [my husband’s] work, but with other companies. That made me really angry. But in the end I just go: ‘__’.

My family laid flowers between [my husband’s] dying and the funeral at the site, and within an hour security had removed them. The main company that owns the building multiplex ordered them to be removed. They didn’t want anyone to know. So, they did that once. So the guys went back the next week [to put more flowers there]. Because we got heaps of wreaths sent to the house. I mean my house was full of flowers and then we got wreaths sent. So we took those down. And then all the wreaths that were sent for the funeral, we just had them taken to the spot. Then the next time, they just did the same thing. They taped them up to the pole, and they still had them taken down.

My brother rang – because I had [my husband’s] phone and it had the contact for the building in it – and so my brother rang him and said ‘What’s going on?’ and he goes ‘I’m sorry, I don’t know,’ he goes, ‘it’s coming from way upstairs, like from management. Who don’t even, who aren’t even here.’ They just have no human feelings obviously . . .

*Was there any communication?*

No.

*Any feedback? Anything . . .*

No. Security said, ‘We’re just doing what we’re being told to do.’ There was no – nothing nice about it at all, the way they went about it. Like what did they do, just throw them in the bin? There’s just no respect there at all . . . . Because [the contractor] – it’s out the front of the [contractor’s] building – and they were watching this happen, the staff in there, and they were furious about it. But they couldn’t do anything.

So when the twelve month mark came up, they offered to have the flowers put inside their window. So we had a display put inside their window in memory of [my husband]. So the security couldn’t touch it then. It’s not part of the building. Because they said: ‘Could we put them on the park bench or the tree?’ And they said: ‘Anywhere you put it, it’ll get taken down’.

It was just straight out rude. Like not: ‘We’re sorry for what happened, but you can’t put flowers here’. That would have been ok. If they’d said: ‘We’re really sorry that something happened, and send our condolences.’ But no, not that – just: ‘Get rid of the flowers and don’t come back’. That was their attitude towards it. That just made me so infuriated. But, I was pregnant – so I just had to let it go, because I couldn’t let it consume me either. But I was very angry for a very long time.

*How do you feel about it now? Is it still . . .*

I’m still angry with it, really. I think about it on and off. I just can’t believe people can have absolutely no human compassion at all.
I mean I know that, I’ve heard people dying on the news, and I’ve always been the sort of person that’s gone: ‘That is so sad. I hope they didn’t have a family’. But that’s it. That’s as far as it’s ever gone because I’ve never been personally affected. So now I do feel bad. I like: ‘Oh my goodness, those people really had real lives’. You just don’t go into depth in your own mind. But at least I always felt sorry for these people – even it was only for a few moments. But I did have some feeling. But these people have none – none at all.

*What do you think was going through their minds?*

Well, [the contractors] have had bad publicity with deaths. So they don’t want any publicity. They don’t want anyone to know that things happen. It’s total avoidance of any responsibility. . . .

*How do you think they could make up for what they did in that case?*

Oh, I don’t know if they can make up for what they did because there’s nothing, I mean, what – they can tell me I can put flowers there? I mean I put flowers there that week for a reason, for that week. If I put flowers there now, it holds no meaning for me.

[The grief support worker] said I could ask them to put a plaque up, on the pole. I mean that would be a way of them showing something, that they – I don’t know.

**TA2 | ‘I’m so sorry’**

[My husband’s employer] was very like: ‘I’m so sorry’. And he was like to the opposite extreme [to the contractor]. And I was trying to explain to him one day: ‘I don’t blame you because you weren’t there. You didn’t push [my husband]. It wasn’t a physical assault or anything like that.

I don’t have anger in that way at all. I believe in accidents. I believe accidents happen. I’ve seen stuff like that. So, I never wanted him to feel personally responsible for it at all.

*Why do you think he was saying ‘sorry’?*

Just because he’s a decent person. And he could put himself in those shoes of if it was him, and he doesn’t want to die. And obviously [my husband] wouldn’t want to die either. And he’s that sort of person that would think: you wouldn’t want it to happen to him either.

*So was it more like that kind of sorry: ‘I’m so sorry it happened’?*

Yes, definitely that, yes. I mean he would do anything he could to change it. . . . It’s not like you deliberately go to work and say: ‘I’m going to make sure someone dies at work today. It’s not like that. The only thing employers are at fault of is believing it won’t happen.’

**TA3 | ‘Most people just want them to admit it.’**

[How do you feel about employers being charged? Is that important to you?]

I mean, if there was a breach, in the sense that they didn’t do the stuff that they were supposed to do, then definitely.
How would you feel if that was found out?

If I found out that they were just cutting corners, I wouldn’t be happy. No.

So one thing you want is for them to be charged. But are there other things you would want for them?

Well, charging, I mean that’s for the benefit of [the OHS investigators]. For the company actually coming and saying that they didn’t do everything within their power, or they didn’t take as much responsibility for what should have been going on. I mean they should front up and just say it – because, I mean, most people out there – and I know I’ve said to people – just want people to admit it when they’re wrong. They don’t worry about making a financial gain out of it. They just want someone to say: ‘Yeah, we stuffed up and we’re not going to do it again’.

What would that mean for you to hear that?

If they did do something? It would mean a lot. Because if they don’t, it just means that they have no care for human life at all. To me, that’s what it means – that they just don’t want to know about what happened. And they’ll make the same mistake again. I think if they have to start facing up to families, then they’ll start thinking about what [OHS procedures] they’re not doing 100%. Because it puts reality into it, and that’s the problem at the moment: there’s no reality. It’s all: ‘sign off on paperwork’. And they just fight in court to say that they weren’t responsible.

TA4 | ‘We just want acknowledgement.’

Would you want to tell them anything, about how it’s affected you? Would you want them to know that, you were talking about the reality?

Yes, definitely. I think they need to see the human side of it. And that’s for those people up there that make the big decisions. You know, the ones that choose that flowers shouldn’t be left at a site. Those are the people that need to be told that there are human beings involved – heavily pregnant ones.

And it’s not just all news and media out there. We’re not out there doing a Today–Tonight show on it. We stay far away from that sort of stuff. We just want acknowledgement I think. We don’t get acknowledgement from any government department. Sadly. Not even [the benefits agency]. That’s a whole other saga.

Would you, if there was an opportunity to talk to them, want to let them know about the human side of things?

I definitely would. Especially with big companies because I think they forget that they have thousands of families involved in their business. It’s not just these executives making money – it’s actually families who struggle.

Who would you want to talk to?

That’s so hard, because there’s such a line of people, really, when it comes to big companies. Because the CEO says it’s the management, and the management says it’s the one under that and then it goes right down to the poor guy that, you know. And he probably got it
pushed up, that there wasn’t time for this and that, you know, as well. So, I don’t know who that would be at the moment – probably a mix across the board.

And another thing coming down to, if they do find if there was something, that anyone was specifically involved in that finding of who was working at the time, who couldn’t be bothered staying back 5 more minutes to sign something off. I don’t know who it might be, because industries work on paperwork, don’t they, and stuff like that being signed off. I don’t know if it was just that.

*So if there was someone in that situation, you’d want to talk to them.*

Yes. That they might not think that doing some paperwork or double checking something is not necessarily important. But when someone dies it’s important.

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**TA5 | ‘Justice is the truth’**

*What for you would count as ‘justice’ in this whole thing?*

Justice is the truth. It’s not pointing fingers at everybody. It’s just that everybody is 100% clear on what happened. There’s no hiding injuries or facts. So there’s no question in anyone’s mind, good or bad, that we all know exactly what happened.

Whether we like it or not is another thing. I’m never going to like the answer because he’s still not here. So for me, you know, I know that it’s not going to make me happy, knowing the truth, but — I just think if people acknowledge that, yes, that is what happened — not just fighting against it. That’s all they have to do is acknowledge that yes, that is — you’re taking responsibility. It doesn’t mean responsibility is a bad way and it’s all your fault. It’s just that accepting that you had some role in it.

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**TA6 | ‘Keep the communication open’**

I just think that anything that keeps any communication open can only benefit you. Because it’s less [communication] that keeps you awake at night wondering and that is the real killer in this whole thing I think, is that loneliness of not being able to talk to anyone. And you just get so involved in your own mind, that it’s not healthy. That’s why it’s always good after I’ve seen [the employer] — it’s just that, you know, you feel like you can breathe again, a bit . . .

*So it’s something about getting your thoughts out.*

Yeah.

*Being in control, a bit.*

It is a bit of control, about — and being involved, because it’s just like this whole investigation, and you’re not a part of it — at all. And [the OHS investigators are] busy, they contact you as much as they can. I mean I know the investigator that was working on [my husband’s] case, he was working on other deaths and injury ones as well. You’ve got to understand that they’re not just one on one with your case. As much as I need them there are other families who want their attention too. I don’t know how it can change with them.

But I think definitely keeping it open with [my husband’s] work has made it a lot easier. And then I think you can support each other when it comes to the actual end of it all, whenever that may be, in the next few years.
TB1 | ‘The need for due process’

What would you have wanted to happen?

I would like to have seen due process. I would like to see people behaving responsibly and honestly, as most people would. You’ve probably got that response from everybody you’ve met. ‘Standard Response No. 5’. I mean it’s only common humanity.

So ‘due process’, for you, would have meant?

‘Due process’ means a competent and proper inquiry, some sort of objective analysis. Actually, this is a big thing, now that I think about it: a less than patronising approach. They refer to you in a very – it’s not an inhumane way – but it’s an insensitive way [the OHS investigators] refer to you in reports. So there’s a nuance of: ‘How dare you question us’. Which can actually blend into: ‘We know what’s best for you’. And because people are risk-averse – you go, ‘Hang on’ – You’re pretty shaky anyway – so you go: ‘Hang on; well I might not be right. I might not be on the right track here’. And it’s only over time that you can carefully put evidence together. Much of it is nuance, and it tends to be patronising. It tends not to be supportive. In my case it wasn’t.

So I suppose what you would have hoped for is that people would have taken your questions and your requests for information more seriously. Is that?

Yes – well, that’s due process – It’s nothing out of the ordinary. It is simply: ‘Have a look at this – let’s go through the process’. There’s a sense of incompetence, and distractedness about the people involved in the investigation; and it undermines faith in the authorities.

[Could you say how the lack of due process affected you personally?]  

It was the prod. Something’s wrong here and none of this makes any sense, and I can’t live in a world that [doesn’t] make any sense. The destabilisation was in the world I lived in. You have to look for answers to settle it. Because if you don’t belong in your own world, where do you belong? You can’t go anywhere else. I suppose you can, actually. Sometimes I wonder about many refugees that came out here after the war. I wonder whether they had actually done a ‘geographical’. They’ve moved down under and carried the trauma with them, rather than standing in the face of it and saying, ‘This is complete shit. We’d better sort it out even if it takes the rest of my life to settle it.’ You don’t want to carry the ill will with you because that could degenerate into real health and social problems.

Just to make sure I understand: so the lack of answers and clarity, the lack of due process, impacted on your ability to make sense; and making sense is part of what you needed.

Yes, yes. Sense is made for you, in part, by a factual report of her death, it doesn’t bring her back, but at least there’s some honesty about what happened to her. And this is very important. It seems almost macabre to want to read the pathology report, but when you read the report and talk to trauma people, things like that, you realise, only 30 seconds before she’s dead. I’m not happy about it, but I am relieved that there’s no suffering. But the finding actually says she died . . . several minutes later. And that’s a very unsettling thing, if that was what you were thinking about someone who you cared about.
So when you have that kind of inconsistency it doesn’t make sense, and you need it to make sense?

Yes, you’ve got to settle it in your own head. The psychologists say you’ve got to integrate it into your life. The lack of process can slow that down because there are not clear answers. It’s interesting, I remember [someone] saying to me, these industrial deaths take between 5 and 8 years to sort out. And it’s right. So, if you want the people left behind to function in the world, because they’re sick, ideally you would contract that process, and bring it down to a shorter recovery time. The lack of process extends it. And may actually promote mental illness because grief is a kind of mental illness. . . . at least in my mind anyway. It’s the lack of peace in your own head. I’m not sure that it’s a serious mental illness, but it is an illness and lack of process can delay healing. If you didn’t resolve things, if you didn’t sort things out you could end up sick for the rest of your life. If I hadn’t made my own enquiries I could have ended up propping up the bar at the local pub, with chronic alcoholism taking its toll,

TB2 | ‘Dark night of the soul’

How did the way in which you were treated by the [employer] affect you?

As soon as I made that call [with the employer telling me what had happened] I knew I was up against it. It made me very frightened. . . . very stressed, and distressed. I mean your best friend has just been killed. . . . It’s easily described in that line from the Wizard of Oz, where Dorothy gets out of the house and says, ‘I don’t think this is Kansas anymore Toto.’ Your world has just turned upside down, in a phone call. . So how I felt initially was stunned and shocked, that night was one dark night of the soul. . . .

It takes you right to the edge.

There’s a river that sweeps round down near home, and as I drove the car back that evening I thought, ‘Am I going to drive in the river?’ What saved me were the pets. ‘No. I’ve got to go home and feed them.’ It takes you to the edge of the ‘abyss’. . . Things have improved from there. But that’s what it did.

The problem is that then you think: ‘Well did people not contact me deliberately?’ You can precipitate crises in peoples’ lives and deliberately destabilise them. I’m not suggesting here that [my wife] was killed deliberately. This was simply an accident waiting to happen, that’s very clear. However, the response to it was fairly calculating. It’s very, very hard to prove motive but sometimes you can work it out. The response was, I think, an attempt to manage the situation in the most selfish way. And ‘manage’ is a pleasant euphemism for driving people to the wall. . . .

So you end up pretty bloody traumatised. And you have to climb your way out of despair. What you’re faced with is very little hope. You can do wonders if you’ve got hope. But if you haven’t you’re living in a godless universe. . . . Bit by bit, it comes back but you end up with little faith in people
TB3 | Who was responsible?

*Who do you think was responsible for what happened?*

This is not an issue of: there’s one party to blame. This is more an issue of maturity and responsibility and has a lot to do with a corporate culture and people [plural] behaving responsibly . . .

Look there’s harm been done. There’s harm which we now know was avoidable. They haven’t deliberately set out to kill her. They have acted in a very stupid, ignorant and insensitive way and the negativity has had its own power. . . . [This was] an accident waiting to happen. There was no risk management, incompetence and general apathy.

*Do you know who was responsible for the risk management?*

Yeah . . .

*So if you had an opportunity to meet –*

Ah right, now we’re getting into the nitty gritty of restorative justice.

*Assuming they would listen to you –*

Well, yeah, of course you’ve got the assumption of they’re going to listen. . . . the man I’m thinking of is just a functionary. I want to deal with the ‘head banana’. I want to deal with the people who bore the responsibility but failed in their duty. A bit like the issue of Abu Ghraib. It was known that minor officials were ‘behaving badly’, But they’re not the only people who should bear the responsibility; they’re not the people who are promoting themselves as good, honest, fine upstanding leaders . . . I don’t want to deal with the monkey, I want to deal with the organ–grinder, senior managers

TB4 | What would you like to tell them?

*So suppose you had the chance to meet with them?*

Well, I’d like to ask what the hell they thought they were doing. I mean, what are you doing promoting yourself as a responsible citizen when you are not acting responsibly? Because, amongst other things, you are perpetrating fraud. Taking money – public money – for something you’re not doing. . . . This is deception. What do you think you’re doing? Life is very short and we should not have to be spending time cleaning this up. There are too many other problems to solve. So it’s in that area: What did you think you were doing? What were you playing at? I can’t answer why they’re playing at it: probably inadequacy or adolescence. Why don’t you be honest and follow the rules?

*Are there things you’d want to tell them about how it’s affected you?*

In a sense, yes: because theirs’ is the promotion of disease – albeit mental disease. I was very fortunate. I had enough sense, enough resources and enough background to stay standing. But this sort of thing could kill people, very, very easily. I could have driven into the river that night. And nobody would have been any the wiser. ‘He was full of grief – oh well, another one bites the dust.’ But none of the issues would ever be sorted out for people
who follow on after us. So you have constant reinforcement of ignorance; and nobody moves forward, even in a stumble. We all stay in the dark ages. . . . Does that explain it a bit?

Yes, it’s a powerful argument to tell the impact.

There’s perhaps a broader group to address also, the workmates who failed to speak up. If you don’t speak up, you’re complicit in the crime. As Edmund Burke said, ‘All it needs for evil to succeed is for good men to say nothing.’ . . . I can’t begin to think how [the other employees] feel. I know that numbers of them were upset, the vicar’s wife told me. But why did you also fail to act in a timely manner, fail to open your mouths when you knew there was a problem, thus contributing to the angst and disintegration of your community. . . .

**TB5 | What would you like to hear from them?**

If you did have an opportunity to meet with those ‘at the top’, and were able to tell them about the impact on you, and to put your questions to them, what would you want or expect to hear from them?

[Laughs] This is a kind of Pollyanna view of life isn’t it, or that saying from Voltaire’s Candide, the ‘best of all possible worlds’. They won’t answer. You just wouldn’t expect it from them. Some people are just not going to grow up. I know what I’d like to hear. What would I want to hear?

Just hypothetically.

Ideally, you would want them to say, ‘Yeah, look, we made a mistake, for various reasons.’ I’d like them to understand what damage they have done. If you’re going to crush people like this, then you have serious problems along with the other issues like honesty that need sorting out. But that’s down the track a bit. .

**TB6 | What would you like them to do?**

If, because the lack of honesty and people’s inability to take responsibility is so much a part of what’s made the journey difficult, I’m wondering if, if they came – again I’m talking hypothetically – if some of those things could be put right: suppose there was an inquest, suppose the truth came out, suppose the people at the top ‘got it’, finally, not because they had to, but because they finally understood, and came and wanted to say to you, that they were wrong, they were neglectful, they were sorry for the harm, and the trauma they had caused, not only in the accident, but in the years following, and that they would do anything to make it – not ‘right’, how could you make it right – but they would like to do something to make amends, how would you –

Yeah: Don’t do it again. How would they do it? How would they make reparation? Be honest. Don’t do it again. . . . Ok, so I’ve got the omnipotent power to induce people to do what I want them to do?

Well, for starters you could say ‘I don’t care. I don’t want to even hear what you’re saying. Or you could say, ‘I reject your apology’. You could say, ‘OK, here’s what I want you to do.’
Ok, I've got it. I'd have to think about.

You're not offering salvation, they're coming to you.

Ok, I've got the power to set them free.

Well, you've got the power to respond to them.

Look, in a practical way, you could probably come up with some good ideas but you'd have to think long and hard about that.

As a rough guide, I can give you an idea. [My wife] is [highly qualified]. She's as good as it gets. That's been funded by the public purse. . . . So you'd think, this is public money – some sort of reparations have to be made about the squandering of public funds. The thinking would proceed from there. . . . This was just profligate use of resources; it would need very careful thought.

I don’t think it’s to be wholly punitive, more a blend of reparation and education. This was a mistake. What we don’t want in the future. So with the evolution of things, in this society where I live, the cog moves one more notch and things improve a bit. You don’t waste a death. That was one of the things that really outraged me. It wasn’t just me that lost a partner. There was a lot of loss, and these people were prepared to just piss this opportunity to learn up against the wall:

There’s not a general answer. It would have to be the ‘horse for the course’, a specific tailored solution. Without malice. Otherwise it becomes reactionary rather than evolutionary. It needs a lot of thought.

So if I came to you, hypothetically, and they said they would like to do this, to take responsibility, and to apologise for their part in what happened and to make amends, would you be open to that, at some future date?

Well, when it’s in the future, would I be open to that? Oh yes, assuming there’s been a proper analysis of what happened. That’s one issue. . . . Yes, with a qualification, which would be: Are these people really being genuine? Has the light globe gone on? And have these people, in their adolescent stupidity, grown up a bit? So yes, and I assume this ties into the efficacy of your process, which is restorative justice. . . .

I think it’s a valid technique, but you’ve got to know people are genuine. Otherwise it’s just going to degenerate into spin. And people, could get cynical about it. I’ve got no doubt that there’s some value in it but be really sure that these people are genuine. In this particular case, you’d be very wary and very circumspect. I have a fair understanding of these people; they’re a pretty slippery mob.

So the qualification was that there would have to be some kind of extensive process to determine sincerity?

Yeah, very much. You haven’t driven through somebody’s fence or run over someone’s dog here. That would be bad enough. This is really serious stuff, not deliberate and pre–meditated, but – as it’s been explained to me – probable charges under the Crimes Act, not just a breach of health and safety. .

Unravel what’s really happened. In a careful and scientific way, with proper evidence; and really know, be very, very certain of what these people did, and certain that these people have some understanding of the harm that they have contributed to.
We’ve all contributed in little ways. But there are degrees of contribution. I let her go out the gate that morning and she didn’t refuse to work that day, but there are issues around health, safety and responsibility in varying degrees. . . .

So it’s about people taking responsibility for their contribution.

Yes! Or their neglect as the case may be. We all contribute to the world for good or ill, but acting responsibly or perhaps we could say dutifully, that seems to advance the greater good. With this crew there’s some really serious issues around them failing in their duty.

TB7 | RJ’s Place in the Legal Process

Suppose they had been charged, and prosecuted, how would restorative justice relate to that legal process? Where do you think restorative justice would have been best, from your perspective: (1) as diversion from prosecution, (2) as a way of enabling them to come to a sentence discount perhaps (it would modify the sentence) or (3) afterwards, post–sentence?

The second two, yes – the first one, no.

The second two, yes. If people show some contrition and some understanding of what they’ve done then, yes. We all make mistakes. But we’re supposed to be forgiving. So, yes, it has a value there [i.e. (2)] - value as an adjunct. A bit like saying to the magistrate, ‘Ok, I’ll do the drink driving course’ when you’re caught driving over .05. That’s fair.

There is a problem in the first one. Despite the fact that we have a somewhat rough and ready adversarial system it’s the best we have – I think there’s some value in a trial, even if it’s just that people can say, ‘Well, yes, look, it did go to trial’. I don’t understand how restorative justice would fill the role of an impartial umpire... And there is a sense in my mind at the moment – and I might be wrong – that it could be used as a cheap way out, which could be dangerous. Restorative justice is a pretty reasonable idea- in a Victorian industrial death context perhaps ahead of its time- but that doesn’t diminish its value. It’s very valuable

So that’s the first one and the second one. What was the third one?

After the legal process has been completed.

Definitely, as a process then. In a sense, it becomes therapeutic at that point. . . . you’re tying things off. At that point it moves out of the justice system into the health system almost. You’re cleaning stuff up. Tidying up. The issues are settled. The computer program’s not running in the back of your mind:

Yes, the three of them are: [One] no I don’t think it works there; two: it’s a very good adjunct; three: it moves into the area of therapy. Yeah, it has at least two applications.

But [in terms of the third one] it moves into the domain of somebody with a spiritual background, healing of the mind. Let’s settle these issues and let them go. So then there’s peace with the world. Not only personally, but for others.
TC1 | ‘Everyone knew before I did’

What really annoyed me was that so many people in town knew so much more than I did, before I did. I didn’t think that was right at all. Then I had to – I mean days later – I had to go and see the police and get more information, because they didn’t give me any. They didn’t come and see me or anything like that to actually give me information.

TC2 | ‘It is a physical pain’

How did you feel when you first heard?

You don’t believe it. Because, I think I said at the time: it’s actually – he was full of life and you just can’t believe it. And it is actually a physical pain: you actually physically – such a physical pain. . . . The human resources manager came down to get me, and I knew then, of course, that something was wrong. The counsellor was in the office with the two policemen. I can remember him at one stage grabbing a bowl, in case I was going to throw up. So it’s a physical reaction, I suppose.

Can you describe that physical reaction?

Yeah, well – shock and actual physical pain in the stomach. I actually remember grabbing my stomach and throwing myself forward, because it hurt. . . .

TC3 | ‘Where have you been?’

[My 16 year old daughter had been out of school for a week or two after my husband had died]. She went to her first class, and the teacher said: ‘Where have you been?’ And she said ‘Away’. And – I’m told – got up and walked out of the class. One of her friends went with her. He never did ask again. I don’t know whether, what the students told him, or whether one of the teachers did.

That was badly handled by the school. . . . Did he apologise?

I have no idea. I don’t think so.

Do you think that would be helpful – for them to do that?

Well, I don’t think she acknowledges it. I mean that’s what she told me at the time. I think she’s sort of glossed over it. She’s spent time talking to [her counsellor], that sort of thing, and her friends of course. They sort of rallied around.

Is that something you’d like to hear from him? Some sort of acknowledgement that he – ?

He probably doesn’t remember himself. . . . I’d like the school to have been a bit more open, in telling her teachers what had happened. I am surprised. It’s a school of 700 kids. It’s not a big school . . . and a small community – for that not to have come up in a teacher’s meeting somewhere along the line, especially with her teachers.
So do you think that the school could apologise?

Well, once again it’s probably – I mean they could – but it would have been better at the time.

Is it too late now, do you think? Could that still happen?

I think so. I mean she’s been out for two years now. They probably don’t even remember. They wouldn’t think of it. They could probably be told that they need to . . . let all of her teachers – individually or as a group – let them know. It would have been a lot better than, you know. It’s not as if they didn’t know who her teachers were going to be. . . . I suppose most of them knew. . . .

I’m just wondering whether this, as a practical way of dealing with that. Suppose that [the grief support worker] had been involved already with yourself and the family, and [your daughter] had come home, and said, this is what happened, and was really upset, and you would have been upset as well. But [the grief support worker] had told you previously: ‘Look, if anything happens where someone hurts you or disrespects you, because they don’t understand, or for whatever reason, give me a call, if you want to, if you want to resolve that before it gets too hurtful, and I’ll see if I can go and talk to that person, and see what really happened, and what was going on in their minds, and if they would like to give an explanation, and apologise, then I’ll get back to you, and we can arrange a meeting of some kind, or even if they just write a letter to you.’ Would that have been a kind of resource that, a service that you would have – ?

I think I would have, yes. . . . Just to give them advice, give them ideas on how to handle this. Make sure the teachers know. In a small community, they’re not just teachers, they’re friends. Their kids play football with your kids. Their kids go to scouts with your kids. But to tell people: ‘Hey, this has got to happen. This has got to be known by the teachers. How are the kids going to deal with it if the teachers can’t deal with it properly.’

TC4 | ‘Too young to be a widow’

It just stunned me, I just could not believe it. We went into the [benefits agency]. I think they knew. But they told me, at 42, I was too young to be a widow. They have this ‘widow’s payment’, but you can’t have it because you’re too young. But hang on: I’m a widow. How can you say any age. I mean, I could have got married at 20 and been a widow by 21. That makes no sense. . . . I think I said: ‘But my husband’s died. That makes me a widow. How can you say this?’ I mean, how can they? . . . First of all, how dare they? And how can the idiots who make these rules actually say that at any age you’re too young to be a widow? Is it that nobody’s allowed to die until after 65? Well, guess what world: this ain’t happening like that. I could not believe it.

How did she respond when you reacted to that?

Well, she couldn’t do anything about it. She has to follow rules. They have their rules, and they must follow them. . . . Although they were very good after that. They took me to a room, and they were very good about that afterwards.
**TC5 | Car Registration**

I had a few things that I had to do, like the registrations on the car. That was handy, because I went into the [transport agency]. I spoke to the bloke over the counter. He gave me all of this information. I told him what I wanted. The car was in my name, the Ute was in [my husband’s] name, so were the two motorbikes. They all had to change into my name, so I could sell or whatever. . . . He took away information and went into the office. I thought, ‘why can’t he just do it.’ Anyway, a bit later, a fellow from the office, who was the manager at the time, of the [transport agency], he comes out, looks around the corner and says, ‘Hi, how are you’. And says to the bloke, ‘Just do it.’ I happened to know him. So it makes a difference.

But when I went to change the insurance on the Ute, I got told: ‘This is a matter of privacy’. And I said, ‘He’s dead. What do you mean: his privacy?’ Oh yes, he can’t do anything. I can cancel it and re-issue it for four or five hundred dollars I didn’t have. They can cancel it and re-issue it in my name, but they can’t just change the name on the policy which was still running; and in time I’d get most of the policy back, because I’d cancel it. But yet, it was a matter of privacy. I stood there for an hour or more, while they worked their magic . . . . It just seemed so wrong. . . . What do they think they’re doing? It shouldn’t be so hard to change something like that into my name. It’s a program on a computer. I don’t need to stand there on the counter, while they try and sort themselves out. . . . I mean, give me a seat or something. Be decent about it.

**TC6 | ‘Grief Journey’**

Over the interview you’ve talked about a number of situations that have been hurtful: . . . I’m wondering how all of that has affected your grief journey. Has each one of them become obstacles and diversions? How has that played out in terms of stopping you from moving on, or progressing?

I don’t know. I know most of them made me angry. I suppose I just want people to understand. But of course they don’t. . . . they’ve got no idea . . . I suppose because I was vulnerable, I suppose that’s probably what made it worse.

If you imagined your journey of grief, imagined it going forward from the death of [your husband], what would all of the things that have happened along the way look like?

It would look like a road with a lot of paths. That’s how I visualise it: that one goes there, that one goes there.

And what do they look like surface-wise?

One hell of a mess. Basically that’s it.

Is it that you’ve been forced to go down this path, and have had to come back and join, and go off again, is that the – ?

Yeah. It’s just, this has come in and that’s come in. . . . The weight of the worry of what’s happening, and trying to deal with everything has probably squashed the grief. It’s a case of deal with it, because it’s got to be dealt with, and there’s nobody else to do it, and nobody to talk to about it.
You mentioned that there was a lot of gossip around the town about how [your husband] had died.

Oh yes, there were a lot of different stories. I’m sure there’s quite a few of them I didn’t even hear. But there’s still a lot that I did hear – all sorts of things.

*How did you feel when you heard those?*

I thought: Where the hell are they coming up with this sort of rubbish? . . .

*If you had a chance to say something to the person who started that rumour, what would you want to say to them?*

Why? Basically, where did you get that idea from? I can’t imagine it. Why would you start something like that? Some people are just mean. That was the meanest. . . .

*What would you want to hear them say?*

Explain to me why they’d start something like that, and accept that they were wrong, that they shouldn’t do it, and shouldn’t do it again. Because what happened to the next one. Do they start something even meaner? It’s just the wrong of them, the wrong thing to do.

*It creates one of those paths off the –*

Yeah, it’s very hurtful. . . . Most likely no one would acknowledge that they were the ones who started it anyway.
A. My sister, she was there for me the whole time – my sister and my brother in law. . . . It was, right from the start, about needing a manual or something, written in point form about what was going to happen – straight from that first minute. I needed someone right then. Because it was two weeks – we were trying to work out when it was between when it first happened and when someone from [the OHS investigators] actually contacted me. So I think it was about two weeks. And there’s a lot that happened in that two weeks. Look it’s a blur to me. But at the time, there was no point in anyone telling me what to do because I had no idea.

So, there needs to be someone there straight away. I was lucky because I had my sister, and she took off and done it all for me. She’s got a great memory, and she could do it. But if that person didn’t have a sister or something like that, they needed someone put in place; and someone that was available 24 hours a day. . . . When [the social worker] did contact me, she thought that I was going to remember what she told me and it took me a long time to get through to her to ring [my sister] not me. Because [my sister] would say: ‘What did [the social worker] say?’ – ‘I don’t know’. So that’s probably the first part of it.

B. Anyone that is bereaved like that, they’ve never experienced it before. They’re in emotional shock. They really need the support of someone who is compassionate. [She] was lucky to have a sister who was able to step in. But in any other circumstances, someone could be totally on their own and wondering ‘what happens to me now.’

A. I suppose too that, by saying there needs to be one person who deals with that, that just comes back to – they would say it’s employing another person. It’s just one more wage, isn’t it. That’s the way I think they would look at it. That comes back to: they don’t understand what they’re putting through. To employ one person to deal with things like that. But it’s very important. But you can’t make people go through it to understand.

B. You’ve got to walk that path. There are computers nowadays, systems that can be put in place at least to start the ball rolling on the right track. It would be very easy. . . .

A. We had to find a solicitor. I never had much involvement in that. I didn’t know what I was doing. I just left it to [my sister], who was following it up and was trying to find a solicitor. Eventually, out of all that she found [a grief support worker]. But she shouldn’t have had to find [her]. [The grief support worker] should have been able to find her. There should be more of [her] around. There needs to be someone. And that comes back to that, there needs to be that person straight away to direct people in the right direction. Because if [my sister] hadn’t found [the grief support worker], she would have just had to plod along on her own.

B. So if someone hasn’t got [a sister], what happens then? How can you expect the bereaved one to do all this? There needs to be someone as a close support or liaison [they can have] access to. It mightn’t necessarily be [the insurance agency], but it needs to be someone connected to step in and help.

TD2 | The Benefits Agency

B. When [her sister] was dealing with [the benefits agency], that was very difficult for [her sister] who wasn’t directly affected. There almost needs like a bereavement line or someone in [the benefits agency] that specialises in dealing with this, rather than you’re just another number ringing up.
A. [My sister] had to, every time she rang [the benefits agency] for me, well for a start I had to give her authority to speak for me, so that was ok. But every time [my sister] rang up she had to explain why she was ringing. It just wasn’t fair. She should have been able to either talk to someone who already knew, or quote a number and they could read it instead of having to go through the whole story every time. So she was speaking for me, but if I had to do it, I just simply wouldn’t have done it. I just would have let it go, and left it at that. Because even now, if I’ve got to do something, if I think that I’ve got to explain myself, I won’t do it. I just let it go.

B. There’s a real big gap there that really needs to be addressed. That’s your grass roots, where all of a sudden: ‘I’m not going to have a wage coming in’. What do they do? They’re coping with the grief, the funeral and everything like that.

**TD3 | The Phone Company**

A. [The phone company] were probably one of the worst ones I think. We’ve actually solved it now, but – they would let me do everything except cut the phone off, because I wouldn’t say – I couldn’t tell them anything. It was crazy wasn’t it. I guess it comes down to – you need that person from [the OHS agency] to be able to do that for you.

*The fact that they wouldn’t cut off the phone, what did that mean to you? How did that affect you?*

. . . It made me cross that they wanted [proof of the accident]. And they wanted me to give them that. It’s just not on. This is a big company saying they want that.

*So they were crossing a boundary that they shouldn’t have.*

Yes. And it’s the same thing. You get a different person on the phone every time, and you’re supposed to go through the whole thing.

*And it’s none of their business.*

No, that’s right. It’s none of their business. They don’t care about you. . . . It was crazy. It’s been over two years. And it was something that was really eating at me. Every now and again it was just nagging at me. So what I ended up doing was – I rang them up and said that I was giving [my partner] authority to speak for me; and they said ‘yes, fine’. He got on the phone, and they just cut it off just like that.

B. I didn’t say why. I just wanted the phone disconnected, and that was it. It happened just like that. That’s just crazy.

A. It was two and a half years, and then it just did it like that. The only thing I can think of is that, because the phone hadn’t been used all this time – whether that made any difference or not. But all that time, and that’s the way they did it.

*If you had the chance to meet the people responsible for that policy, what would you want to say to them?*

I would like to say that they have got no right to ask for things like that. If they think that you can go and photocopy something like that and send it to them, they got rocks in their head. It’s just not going to happen.
B. Because they’re a department. They must be able to cross check with the right departments to find out that it’s true. Why do they have to actually have the family go through – that’s pretty demeaning.

**What would you want to hear from them?**

That they’re going to look at putting into place the right procedures, or whether [the OHS agency] or some department when these sort of things happen if there wasn’t even a central department which notified out to all relevant [agencies]. . . . Some government department which, if say [the phone company] needs to verify what’s been said, or it automatically happens somehow, I don’t know.

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**TD4 | Debt Collector**

A. Another experience that I had was – I’m not even sure how the [finance] company found out – but [my husband] had an interest–free card, and he had something on there. It was only something like 2 or 3 hundred dollars or something like that. Now that company, they put it into the debt collectors – and I got a letter from a debt collector to say they wanted this money, but it was an overseas, an Indian thing; so I had to go through something shocking to pay this money. But it is amazing how they found out, yet [the phone company] or someone like that [couldn’t]. And for them to put it into a debt collector – I said ‘Why would you put it into a debt collector?’ – It wasn’t even overdue. It was because they must have straight away thought: ‘We’re not going to get our money’. So they put it into a debt collector.

**So how could they have done that differently, that would have been more respectful?**

I think that the [finance] company itself should have actually sent out a letter to the estate. But to not even inform you that they are going to put it into the hands of a debt collector. And I wrote this huge letter, but I never ever sent it because I couldn’t. I’ve still got the letter. But I couldn’t send it, because I thought: ‘What’s the point. They don’t care.’

**So that’s the message that they’re giving you is that they don’t care.**

I thought, they’ll just read that – or they won’t even read it – they’ll start reading it and think, oh, it’s just another waste of time and they’ll throw it in the bin.

**So if you had a chance to meet them in person, what would you say to them?**

That they need somebody that’s going to deal with just that sort of thing. Because that probably happens a lot more than what I imagine. That many people that have got things on credit these days. It must happen an awful lot, just over night. I suppose I’m lucky in that way too that we never lived on credit. It was that one thing. And that one thing – two hundred dollars or whatever it was – was very painful. So imagine people that are thousands of dollars [in debt] and they have a debt collector chasing them for that sort of money. That would be just awful.
A. I went back to work about 6 weeks after [my husband’s] accident, and – because I didn’t have anyone that I could talk to any time, I found that [the social worker] rang me at work – even now, to this day, I can’t even talk to [the grief support worker] at work – and I would just say ‘I can’t talk to you at work’. But she continually rang me at work, because that was her time at work. It just didn’t work. . . . like I would say ‘I can’t talk to you now. I need to talk to you another time.’ One of her comments was that her little boy would be in the pool swimming then, so she wouldn’t be able to talk to me. Silly things like that, whereas – I thought, ‘I don’t care.’

B. It’s as though they’re not really trained properly. It’s so inappropriate.

A. It’s nothing against [the social worker] personally, I just thought that there should have been something else there. They really did need something. Because to ring me at work – because work was the only thing I could do properly. And she’d ring me at work; and then my work wouldn’t work. It was crazy. And it still is – to try and ring someone at work, and tell them [that they are doing that] because that’s their work hours. Whether that’s a practical thing to think that someone can work 24 hours or have some system that’s not in working hours.

B. They need to understand more. They should have more compassion. Anyone else would realise. That’s a basic [thing]. It’s so hard to understand. Ringing up and then talking about issues intimately. They’re quite big areas that need addressing, because there must be a lot of other people in a similar situation. . . .

A. She rang me at work quite a few times. And I just said, Look I can’t talk. I’m at work. But she would keep going, trying to keep it going – because that was the time she needed to talk to me, because it wasn’t practical for her to talk at another time.

Can you explain the effect that it had on you, when you were taking a call at work?

I’d end up like this. I gave up my job . . . not long after [my husband’s] accident. I went back to work, and then I was off at another job . . . and I really enjoyed it. Because, what it boiled down to is: [my husband] and I did everything together except for work. So the one thing I could do is work. So I just kept that completely separate from anything else, and that was my work. So I didn’t want to bring all that to work with me. I just needed to be able to get away from it. So her bringing that up at work was making me not being able to cope again. It seemed like you had that block in the day when you could cope (even though you weren’t, you were just going along). Does that make sense?

A. Where [my husband] had the accident, the guy that was there was informed of what happened; and I have been informed of what happened. But [my husband’s employer] only knows what we’ve told him. I don’t know how much he knows, because I have a lot of trouble talking. [The employer] and I can’t do that. It’s not because we don’t like each other. We’d love to talk about it but we can’t. But he needed to be – he was in the middle. And someone should have involved him a bit more I think. Because once he wasn’t found negligent, he was really shoved out of the picture. Because, it’s typical [of the OHS investigators], I reckon, if they’re not negligent, don’t worry about them. We’ve got to find someone that is.
Because him and [my husband] were very close. The whole family were . . . [My husband] worked for a family. They all, they all should have been told what’s going on. We went there for Christmas, stuff like that. But I guess [the OHS agency] would say, ‘Well, it’s your responsibility. You tell them’. But I can’t.

B. There was probably nothing offered to [the employer], like counselling. It doesn’t mean to say that he – well, he is affected by it. And it wouldn’t matter if you – you might have 20 employees or whatever. If one of your employees has an accident on your worksite, you’re going to be affected by it. So there’s nothing – well I don’t think there is – anything offered.

A. I find that really hard to deal with, that part of it. Because of the fact that they were friends. And they were the ones who cared about what happened to [my husband]. . . . I would like [the employer] to know. I’d like someone to ring him up and say ‘What do you want to know.’ Not him have to chase around to find out something that he should have been told. . . . Apparently he’s doing it really tough. And it’s two and a half years down the track.

TD7 | Accountability

One thing that we’re exploring is that the legal system has a very tight definition of what responsibility is or what would count as someone being responsible. And sometimes that doesn’t always mesh with what we think about what responsibility is. And there are reasons for that, legal reasons. But you can sometimes come away thinking ‘yes, but they were still, at some level, responsible’. And I think it’s that kind of moral responsibility that restorative justice might be able to look at even though the legal system won’t go there. And people feel responsible too, even though, legally, they can’t be held responsible. Do you have any thoughts about that, in your situation?

B. That’s pretty relevant isn’t it.

A. I don’t know how to say it without getting – I won’t say I don’t want to talk about it, because I would actually like to say something about it – but I just have difficulty talking about it. Because I do think that this person should be – I do think I should be told if he feels responsible. I would like to know. . . . I don’t know how else to put it. . . . It comes back down to I know that [my husband] wasn’t responsible. So who was? Does he feel like he was or he wasn’t? . . .

If you had a meeting with him, what would you like to ask him?

What I would like to ask him, and what I could ask him are two [different things]. I could never sit and talk to him – I can’t tell you what I would want to ask him. I suppose, in this situation, even if he was to write what he thought – even if I never read it – just that he – yeah, I’d like to know what he thought – how he perceives that he was part of it –

B. [Whether he felt responsible at all] or whether he felt that [her husband] was responsible for it. . . . There are things that I can’t go there with that one.

I guess it’s one of those areas that the legal process hasn’t addressed, in the way that you would have liked. And I guess that’s why we’re thinking: Is there another way they could address what you’re needing?

A. Yeah, but I don’t know how it would be. Because I couldn’t be in the same room – so how would you do it? I just don’t know.
B. Because that’s what it needs to really address it. [She] would need someone to sit down, like we are. And then he probably wouldn’t want to anyway. Then to say, ‘What actually happened on that day? How do you feel about it?’ It just seems unreal. That’s the only place you could get to – to try and take yourself there – to know. Otherwise it’s only [her husband] and [the other person] who really know. And then the law’s covered what it can cover. – And if he was responsible, he’s not going to admit any – it’s just a whole –

*And yet the truth is so important at the same time – to get answers.*

A. Yeah.

B. Particularly what sort of bloke [her husband] was – with the safety side of it. That’s what [she] struggles a lot with. It’s a real big thing isn’t it?

A. Yeah, it’s a big thing. . . .

*Don’t answer this if you don’t want to, but if you were given that opportunity for him to sit down and explain to you what happened truthfully, is that something that you would be interested in?*

A. . . . Hypothetically, yes. I would love to know that, yes. But to physically do it would be –

*So if it was done through a letter – that would be preferable?*

B. Or have someone there like [a sister], or someone.

A. Yes, and with a facilitator, to make sure that it was a safe conversation, not alone with him or anything.

No, yeah it would have to be – and you know it comes down to too, is this the right time to do that. Because, when it happened, you want to know. And then you go through the whole thing: you don’t want to know. And then you do want to know and you don’t want to know. It’s just all, for starters, too unbelievable. So when’s the right time to know?

*Do you have a sense of when would be the right time?*

Sometimes I think you probably would have been better off knowing from the start, instead of torturing yourself, wondering what did happen. But then, on the other hand – I don’t know. . . . It comes back again to the kids too. They might want to know. . . . Because [my daughter] is 19 now, she might want to know. Maybe she should be given the chance or the kids should be given a chance to say – There may be something there for the kids. . . . She feels that she’s left out. I know that. – If she had someone that she could say to, ‘I want to be involved in this’ – or ‘I want to do that’ or something like that. . . .

I still say that, if it was illegal for [the person with my husband at the accident] to do what he’d done, then it wouldn’t have happened. So it’s really hard for me to think that he’s not responsible, when –

B. He would have been held accountable, if it was illegal.

A. But it wasn’t illegal, what he’d done. But it should have been illegal. . . .
You’ll have seen in the report that there are about 8 different ways you could do restorative justice. You could do it as an alternative to prosecution, you could do it where there is no prosecution, you could do it alongside prosecution, you could do it at the end of everything, so that the legal process has been done, it’s finished with, and then you can deal with the more personal aspects of it. So it’s not an alternative, it’s done as well as the legal system. So it’s where you think it might fit best – because that’s an open question.

A. Ok, right – because that was one of our questions to you: is it going to take over the actual legal procedure – is it like a mediation; and we didn’t feel that that would have been appropriate. We still feel it’s got to go through the legal system. Then if this can be at a later time – I can’t see any families actually sitting down with them – but there could be some. It could happen.

B. You mentioned that after the Coronial Inquiry, it was suggested that, on their recommendation, you bring this together. The Coronial Inquiry, they don’t have them till after the prosecution. So prosecution can take 18 months to two years [A. Sometimes three.] You’re talking about a long way down the track for them to change their minds and say ‘sorry’. That’s something that should be done right from the front, I think. It’s only an observation.

A. It was a combination of error, in the fact that it was education and training on the company’s side. It was ignorance on the part of the young lad that was involved with the incident. . . . It did bring to the core the fact as a part of we’re all responsible, in my eyes, and it’s only my personal view, that we both have responsibility. The lad [at our son’s workplace] questioned himself [before he performed the action that led to the death of our son]. . . . And the company have the responsibility also to put education and training in place.

B. There was a forklift driver – he could have been apportioned some blame. There was a site manager, for not knowing – he didn’t know there was anything wrong with the site. There was the general manager, for putting it there in the first place. There was a lack of procedures. There was a lack of instructions to the workers . . . They call it the corporate veil. Everyone just hides behind it. That’s very common.

A. We just feel that the education is really so important, and the training . . . We strongly, we can’t say it strong enough, of the importance of – each and every one of us have the responsibility. Because we only have one chance at life, and we don’t want to lose it at work. Everything should be in place. It should be a safe, happy, healthy environment for everyone. . . .

C. We still haven’t spoken to anyone that I consider, within the company, that matters. You speak to lowly graded managers. You can’t speak to the actual people that are making the
decisions. They just don’t want to know about it. Because it’s a large company. From a large company point of view, you never get to talk to the directors. You never get to [them]. You get to talk to the local branch manager, and that’s about as high as it will go. Initially, everyone was fine. They couldn’t do enough. But then you knew when the solicitors come in and then straight away . . . I rang up and was speaking to someone, and everything was different. Then all the managers sort of disappeared. They either got the sack or quit. . . .

I couldn’t meet with who I wanted to meet with, so you give up. Because, if there’s going to be a meeting between management and the victim’s families, it needs to be – I would suggest that you ask the families who they want to talk to. Not let the company appoint someone to come out and talk. But someone who matters, someone who can make decisions. It always ends in one person. I want to talk to him – because if I don’t talk to him, I’m not talking to anyone. Because they sit up in their ivory towers and they’re protected. They’ve got no responsibility for, because [they say] ‘No, I appoint managers for that. I’ve delegated. It’s not my responsibility.’ That now permeates through the whole of society. . . .

D. When you get to speak to someone like that [i.e. a manager], they’re not the right person to speak to. We went to a meeting, didn’t we, not long after [our son’s] death, and the guy says to us: ‘Well, you’ll be pleased to know that all the machines are guarded now.’ I felt like – ‘No I’m not! It should have been done when it was pointed out to you ages ago.’ Because they did know. . . .

What would you have liked them to say?

D. Nothing like that. I would have preferred him to really realise that this should not have happened; and yeah, ‘we were definitely wrong’. Rather than say, ‘Oh, look, we’ve guarded it now’. Because that doesn’t mean anything to us. . . .

B. [In terms of meeting those responsible] ok, you could sit down, but it would have to be someone important; it would have to be someone they could relate to, who could understand what happened; who has that ability to acknowledge, even apologise if they have to, just to take it on board, that ‘Look, we are really sorry this has happened. We have, unfortunately, only now put something in place – something that doesn’t help us – but we can assure you it won’t happen again.’ But it would be up to the family – totally up to the family. It would be their choice as to whether they wanted to do that.

Is that something you would have wanted?

B. Yes. We did speak to the company afterwards, [A] actually spoke to the company after didn’t you.

A. Yeah.

And how did they react to you?

A. Oh, they were alright. They admired [our son].

B. They did have a lot of respect for him.

A. Non–event really, as far as the incident was concerned. There was no discussion, very little. In fact, their term was ‘it was just bad luck’. . . . It killed [several] people. Bad luck.
C. I actually had a policeman say to me – because we wanted to put in an impact statement – he said to me (and this is just about verbatim) ‘You can’t put in an impact statement mate, your son was just killed at work’. That was it. It has to be a crime. And I thought, well, how do they know . . . immediately in his mind, he was killed at work, so there’s no crime. And that is basically the problem. I still believe that’s the main problem. They do not treat crimes in the workplace as crimes, as very serious crimes. Until that’s addressed, nothing will change. . . . I think it’s a cultural thing. Because guys in the workplace themselves will just avoid safety if it’s going to stop them getting a job. It’s right from the minute you start work: ‘Get the job done – don’t worry about it – what are the odds of that happening.’ I mean I used to always say ‘they’re their own worst enemy’, because I used to fight that. . . .

C. The only way you’re going to affect any change is – and I’m talking large companies again – make a workplace death or a criminal activity within the company affect the shareholders, because then the shareholders will apply pressure to those in charge. Because everything goes down to the dollar. Everything is the dollar.

B. In the 80s, when they had the same problem as we’re having – making people responsible – finding people responsible. And they brought in culpable driving charges to put people in jail. That’s what this industry needs.

A. No one goes out with the intention to kill or to maim any body. No one goes out with that intention. But someone – you are accountable. If it’s gone through the courts and it’s proven that that person is responsible, then they have to be accountable in some form. And we’ve found, over the years, that the fines that have been handed down, over the years, has been pitiful. It hasn’t matched the crime – as we refer to it as, because they were killed at work – as it should. The judge will stand up there . . . he will give the company a serve, and we think, ‘you beauty, he’s going to hand down a good sentence’. We are disappointed every time, because it does not match what he has stated. Because they’ve fixed the problem, now – it’s ok. But in the meantime, how many people have they maimed and/or been unfortunately fatal, that has caused the change to have brought this about. I mean, had there not been a fatality, that would still continue. It’s not brought into the media. We always say that a workplace death is a hidden death. They’re hidden. No one wants to know about them. And unfortunately because we’ve experienced it, we do. And it’s through people unfortunately like us that go through a tragedy as such that can then see what’s happening; and hopefully get a message through to the community that ‘Don’t let this happen. It is happening’. . . .

C. The board will say, ‘It’s cheaper to have the accident than to fix the problem, because the fines are so small, no one’s going to jail, so we’ll just gamble that this won’t happen; and if it does, well, it’s still less than if we fix it. And that’s what’s happening.

_What kind of penalties do you think would fit the . . . ?_

C. It should be along the lines of culpable driving, culpable manslaughter, whatever you want to call it. They need to get the message through. I believe that the only way that you get the message through is harsher penalties. And to get the message through properly, I still believe that, instead of a direct fine, maybe a percentage of the share dividend – just to affect the shareholders, who will then say to management: ‘Don’t have any more of that’.

A. Name and shame, basically. Bring it to the fore, to the media.
C. Even if it’s just 5% or 10%, ok, that’s what we’re taking as our fine. We’re taking 10% off everyone’s share dividend and that’s it. Then the shareholders will jump in. But realistically, that will never happen. But it needs to happen.

A. The new penalties, we’re hoping that that might be, that might start to make a difference because . . . up to 2004, $250,000 was the max. Well, now it starts at $250,000 to a million. So if they’re fined $500,000, that’s going to hurt a little bit more. Bigger companies not quite so much probably, but smaller companies it will. We don’t want to see them go out of business. But if they have to, if it’s been proven, who else are they going to maim or kill, if they’re going to continue without being judged, without a penalty being handed down.

B. And we don’t want to see anyone going to jail. We don’t want that.

A. Because they suffer too, we know that.

B. All we want is for the directors, instead of going in the front door of their building, and walking up to their offices, and going back that way when they go home, we want them to go through the factory, and look at and be concerned about the safety aspect, and see what’s actually operating, happening on the floor. If you can get the shareholders to make sure they do that, that’s one way, my word it is. I don’t know how practical that is.

A. We see the companies just fold up and walk away. And there’s been more recently, than we would like to see, where they just change the name and walk away. So when finally a sentence is handed down, great – whoopee–doo! They’re not going to pay it. They’re not going to pay it. They can open up again in another name, and start doing the same thing. There’s no regulation. We need regulation in these small companies that are opening up. They don’t have to go through Occupational Health and Safety guidelines, they’ve got none. They’ve got no manuals, they’ve got nothing to show their employee—whether it be one or ten employees – they haven’t got anything to show them what their responsibility is. So it’s just an absolute nightmare.

B. It’s not treated as a criminal offence at all, so they can do what they want.

A. Everything we’re talking about is reactive to the accident. We need to stop the accident happening. And I really would – I’ve thought a bit about this – you need to get into schools, you need incidents like Longford and stuff like that to be put into history, Australian history. Let them learn it. Let them learn the things that happened beforehand, what went wrong, and the impact on the families, within kids growing up, just keep that there. Probably take 20 years, but once these people reach board level, maybe they’ll have a bit of conscience; maybe they’ll remember then. That, in unison with stronger penalties and better work methods from police, and better cooperation [between all those responsible for investigating the incident]. They’d go in there and have three different inquiries and not talk to one another.

B. It’s good now we’ve got the Memorandum of Understanding. . . .

B. [In our case, the company was fined] $45,000. I know it was [many] years ago, but even then it was a pittance.

A. It’s a company worth $700 million, a multi-national company, worth $700 million, they fine them $45,000.

C. It’s about what they’d pay for their Christmas do.

B. So it’s a hit in the face when you . . .

C. Yes, that’s an insult to the person killed.
B. It is, yes. And I think that’s where . . . it’s the justice that we want for them. This should be happening. How dare they.

C. Everything’s based on money. That is the fault at the start. That’s what causes it. Even the justice system is based on money, monetary penalties. There’s nothing else. This is where the prison sentence should come in. Because if you’re going to justify fines and actions and procedures and work methods all on the dollar, then you’re going to run your accounts, your accountancies, based on the dollar [cost of] medical accidents and stuff like that. Basically what you need to know if you’re going to run a company is ‘What’s a life worth?’ because you can’t justify any decision with a fine unless you know what’s a life [worth]; and then you can’t value a human life. So it has to come in a jail sentences, things other than monetary . . . Until that happens, then you’re going to get pro–active, things like this, and then maybe they won’t happen so much. Until you can get the mind–set, the culture of the people, as [A] said before, it’s expected. Road deaths are expected, work deaths are expected. But why?

A. All your major construction companies, building these high–rises, they build in a factor of one death, into their costing. They won’t admit it but they do, I know they do.

C. There’s a term for it, it’s actuarial accountancy. That’s what they call it. . . . If a person is convicted of a drug crime, he’ll lose his house, his car, the proceeds of crime. I cannot see why the companies [who act] against the law knowingly – so why not [treat them in the same way].

B. What cheeses me off too is sometimes when you hear a penalty for jail or a high fine for fraud . . . They get jail. What’s a life? It just doesn’t make sense to me. . . . The monetary side of it is nothing, and it doesn’t mean anything. . . .

TE5 | Fines to support families

B. Even with the fines that might be handed down, they go back into the government system. They don’t go to the families. I think a lot of our community believe that that money goes to the family, they really do. . . . We think some of the fines that do get handed down should be put back into a system as far as . . . anything that a charity type of situation that they can, ‘Oh, well ok, they can at least acknowledge that that’s going back into that. . . . Where they can help those families.

TE6 | Do they accept responsibility?

B. With regard to do they accept responsibility, most that we see, the way they do it, is by acknowledging and pleading guilty when it goes to the court. They plead guilty because they get a lesser fine. That’s the only way that we find . . .

A. They’ll probably get a number of charges dropped. They come under this plea bargaining . . . they’re right into that.

D. The facts don’t come out either – the lead up to the incident and what actually happened. All that messy stuff they don’t want the public to know about – the messy stuff about their company. So they plead guilty and none of that comes out.

B. If there is a director involved personally, we don’t know. We can only assume that they feel bad, that this shouldn’t have happened.

D. Because we really don’t meet them, so we don’t know.
B. And that’s the other issue: should we sit down with them and talk to them. . . . Is it going to make it better for us if we were to do that?

D. It’s hard to say.

B. I guess we would like to see them acknowledge and apologise and realise they have got that responsibility. I guess that’s the outcome after, is when they do change something, to prevent it from happening again. And spending what little money it might have been – it might cost them thousands, but it might be minimal as well, to fix something, to prevent it, so, in that way, I guess in their mind, in their way of thinking, it’s all they can do to take that responsibility and fix it. The other way is I believe they should also be in touch with the families. They should acknowledge the families. . . . [I]n our case, we knew some of them; and then all of a sudden they don’t want to know you. They won’t talk to you, and you feel like, ‘What on earth have I, what have I done’. So I think that acknowledgement of, even some of them in the company just keeping in touch with you, and I know one company that do that. And they contact [the family member] every year. And I think that’s excellent. That’s really great. I admire that. They got a pitiful fine too. But at least they did acknowledge the family. They are very far and few between. But it does help. I believe that it would help to realise that, ok, they’re still talking to me. Just the acknowledgement I guess, instead of just shunning you aside – ‘Can’t talk to them’, you know.

C. You really need to know that, whoever you’re going to talk to is fair dinkum. And that’s hard to know, because all the crap that comes your way, the solicitors, they’re all coming from different directions, they’re all with their own agendas, and it’s very hard to get someone you believe is important enough, to talk to, that you can get your point across, to think that they’re fair dinkum, or they’re not just there as, you know, they drew the short straw, so I’ve got to turn up.

B. We’re very open–minded aren’t we, to each and every person, organisation that we speak to. Because everyone has an agenda. And we have to sort of understand where that’s coming from. . . .

C. Too soon after the accident, you feel like – there’s a lot of anger there. Whereas too long after the accident, there’s no trust there. . . . So you’ve got to find the right time and the right people. It would be very difficult to do.

D. It would. Because I think there’s only a very small time frame between the initial anger and shock and then the time frame of being too long.

A. The company would have to take that approach very, very quickly. They couldn’t wait for the coroner. . . . The company know the results anyway.

C. The best part for the company would be to be fair dinkum, and not lose contact – once the meeting’s over, don’t say: ‘That’s it, we’ve done our job’. Stay in contact.

So it might not be the only meeting you have. You could have another meeting, maybe after the legal process?

B. Maybe not even a meeting. Just a phone call: ‘How are you doing’, ‘How are you going?’, ‘Is there anything we can do for you?’

D. I think meetings would be I think a little bit too hard for most people to . . . .

C. The first meeting would, I would imagine, be a face–to–face meeting, initially. But the first one would be very hard there would be a lot of anger there. And whoever goes from the company would need to realise that, ok, this is venting on me.
B. But you wouldn’t want it too long after either, because it needs to be focused on now, you know, within that time frame.

A. And they need to stand off on their own bat, rather than wait for the courts to find them responsible, and they say ‘Oh well, I’d better do it now.’

B. Yes, it needs to be done before the courts.

C. If they don’t plead guilty, then they’re not going to do that.

A. If it’s done quickly, you wouldn’t know what they’re going to plead. . . . We’re not really talking about whether they’re guilty or not. We’re talking about their image to the family.

C. I know that, but what I’m saying is that they’ll gag whoever they’re sending because they might say something that will be [raised] in court.

A. But isn’t there an assumption here that that gag’s been lifted, I mean, from the insurance company and that? . . .

B. They won’t talk before the prosecution because – which would be good – but that’s more or less stating that they’re guilty straight away. . . . Once their lawyers get involved, they’re told not to talk, because it’s admission of guilt, and you’ll say the wrong thing. . . .

A. Saying sorry is an admission of guilt – look what the bloody government went through with the Aborigines – and it is. People perceive that to be. I agree with what John Howard said, he said, I’m sorry it happened, but I’m not sorry because I didn’t do it. And the same thing applies here. Everyone’s sorry it happened – even if it’s a pain in the arse to them and it costs them money, they’re sorry it happened. But whether they’re for the case of the people, to the families, that matter. . . .

B. It’s got to be genuine. It has to be a genuine apology.

How would you feel if they were willing to say, ‘We’re sorry it happened’ but not . . . at the early stage, before the prosecution . . . just as a way of . . .?

A. We know they are anyway.

Would that not help?

A. I don’t think so, no.

B. I guess so, because if they were in touch with us a couple of times, the company, and I suppose you think all along, oh they’re doing the right thing by you, you know, and until that inquest, I thought, yes, they’re looking after [our son’s] interest and you believe that. You really believe that. And then when the actual inquest or prosecution is actually held and the fine is handed down, I can recall sitting there, and I said, ‘What happens now?’ And [A] said, ‘That’s it’. I said, ‘I beg your pardon’. And he said, ‘That’s it. That’s it finished.’ And I couldn’t believe that. That stunned me. . . .

So what else would you have wanted?

B. I think if they had of rang then. But no, I don’t think we heard from them as such.

A. Oh well, we heard from [the general manager]. I don’t think we can complain about the company really in the aftermath. They organised a big auction night for a football club, and all this sort of thing. . . .

B. So with ours, if we really had to state anything, they did acknowledge. . . .
It raises an interesting question about the way in which the legal process gets in the way of what’s important to you. It sort of raises the question: if you had a choice between people telling the truth about what happened and acknowledging it and being there for the families and the legal process, which would you choose? I mean, what’s more important to you?

C. You would like to know what’s happened. But if someone is killed – your husband, wife, son or daughter – you would like to see them suffer the penalty that’s due them. Because basically, there’d be a lot of people out there who would say, ‘Well what’s going to happen to me. It doesn’t matter. Let’s just do it. Never mind. I’ll just admit it. Nothing’s going to happen to me. I’ll admit it. We’re making money.’ That’s how some people . . .

B. I believe there has to be a legal procedure definitely. If there’s a serious injury or definitely a fatality, there has to be legalities. There’s been a death. It’s a criminal offence. In some form . . .

C. It’s justice for the person that’s killed.

D. If you had to choose between the two, I think most people would go the legal way. They would still want them to be accountable, rather than have a face–to–face, someone say, ‘Oh, look we’re really sorry about this and blah, blah blah.’

B. That just, ‘oh well, just move on with your life.’ You’ve lost a member of your family. Your heart is broken.

D. That’s like an empty, an empty thing. . .

C. It’s a natural . . . I suppose there’s a bit of revenge in there somewhere, but it’s more justice for the person that’s been . . . you want them to see, ok, you didn’t die for nothing. We’d like to see some sort of change you’ve brought on, a change for the good. Something can come out of the death.
TF1 | ‘It put a big hole in me’

A. Our son was crushed to death at work . . . . It put a big hole in me I’ll tell ya . . . . If [the company] hadn’t have done the wrong thing, [my son] would still be alive. That’s what I say to [my wife] every Sunday we go to the cemetery. I get pee-d off because I’ve got to go there, when I know that I shouldn’t have to go there.

It wasn’t [the OHS agency’s] fault. It wasn’t anyone else’s fault. It was that bloke who owned that shed, and built that crap thing that he built. That’s what killed my son. I’ll despise that man for the rest of my life.

TF2 | ‘They really didn’t want to know us’

B. [The OHS investigators] were very good to us from the start. Then we found that they really didn’t want to know us in the end. We had no contact with them since the day we went to court. The only one that really does keep in contact is [the grief-support worker]. It was like the lead up to going to court, they were there. They wanted to be there. They wanted to know what was going on, where we were heading and what was going to happen when we went to court.

_After court?_

B. After court, I think there was one phone call.

A. I think all they were worried about was just what money they were going to get out of it. That was about it I reckon.

So they were just interested in the prosecution?

A. Yes. They just didn’t care.

B. They were not worried about us, as parents . . . .

B. Even after, say, two years, they’d be nothing wrong with them ringing us up to say ‘how are you going?’ They’ve just cut us right off. They became our friends. Like they wanted to be our friends, right from the start - right through. And that’s what I’m saying – not even a phone call to say: ‘How are [you] going?’ They got to know us personally. They knew a lot about us.

TF3 | ‘Don’t mislead us’

B. They gave us a lot of dates where things didn’t eventuate. Even the court dates: they just all over the place. In one day, we had a phone call to say it was going ahead - wasn’t going ahead – it was going ahead but we didn’t have to go to court. We decided to go down. We told our children that nothing was happening. We went into court, and it just all went through. I had two very upset children. They felt that we didn’t want them there. I mean they’re adults . . . We wanted to keep them involved. But the information we were getting was wrong, so we were giving our children the wrong information.
A. They were worried that we were getting information from everybody else, and we weren’t telling them. We should have explained to them what was going on but we were only getting crap anyway. So what was the point of telling them?

B. The whole system that we went through with the court was really bad.

A. An absolute disgrace. . . .

B. When the county court sits, it runs for a month. And we were told we would be heard from that date, within that month. We hadn’t heard anything for that whole month.

A. That’s when I rang up the court.

B. That’s right. But how did you feel that month leading up to it, because nothing happened?

A. Shit. How else would I feel? I was cheesed right off. Absolutely. . . .

A. I did ring the court and I asked them myself what was going on. The chap at the court said: ‘I’ll ring you back, and find out what’s going on.’ So he rang me back and he said: ‘There’s no way of knowing you’ll be heard in that month.’ And then we got a phone call from [the lawyer], and he said: ‘Yes, it will be heard’. So I rang the court back up again and I asked the bloke, I said: ‘Now I’ve got a phone call today to say that this is going ahead’. And he said: ‘No, it’s not.’ I said: ‘It’s not?’ He said: ‘No, it’s definitely not going ahead.’ I said: ‘Righto’. So I rang [the lawyer] back up and [the lawyer] said: ‘Yes, it is going ahead’. I said, ‘Well, the court’s told me it’s not.’ He said: ‘Well, I’ll get onto the court and ask them.’ So I got a phone call back from [the lawyer] and he said: ‘Yes, it is going ahead.’ But the guy at court said: ‘No it’s not’ – twice, to me.

B. Then you got a phone call back from [the lawyer] in the afternoon to say: ‘No, it wasn’t going ahead.’ This is all in one day. . . . I felt like my head was a bouncing ball. Like they were bouncing it: ‘Yes we are’, ‘No we’re not’. My head was just so clogged. I didn’t know what was going on. . . .

A. So we had five phone calls in one day. I think I rang [the grief-support worker] and I just said: ‘I’m sick of this’. I had a rope in the shed, ready to hang myself and everything. I just wanted it over and done with. That’s all we wanted, just to finish it. But we’re not finished yet. It’s been three years. So we’re still waiting to . . .

B. I just can’t understand how the legal system and the [the OHS investigators] or whoever – they don’t work together. If they can’t give you a time or a date, don’t give it. If it’s not going to go ahead that day, don’t mislead us. You want something concrete. You’re going through enough and you’re dealing with enough. I know the courts are probably all over the place. They’re that full, and they don’t know what they’re going – what they’re doing. But at least correspond with each other before they get back to the family. . . .

B. We believe that it wouldn’t have gone ahead without [A] making that phone call to the court house, at that stage. I think it would have been put off till the next time that they came and sat. . . . They didn’t even say, when they gave us that month when we’d get heard in, they didn’t even ring up and say: ‘Look, no – we don’t know what’s going on. It’s not going to happen.’ We had no contact with them. And I think we ended up ringing them once. And that’s when you decided to ring the court house. I think they should organise it that, they don’t give you that time-frame – they don’t give you dates and times. Because they just let you down all the time . . .

A. [When we did go to the court] they told us that our impact statements would not be read. Nothing would be heard. Nothing would be done at all. All that we were in there for was to set a date. Two minutes and we’d be back out. . . . We walked in, and they got up and started this court case. I said to [the lawyer], ‘You’re not going to read the impact
statements are you?’ He said: ‘Oh, I haven’t got them with me.’ He had to go down and get a copy of them, from down at the court, down the bottom. And then he brought them back up and gave them to the barrister, and then the barrister read them all out. . . . We couldn’t ring the kids, because we weren’t able to use our mobile phones. . . .

B. [So our children] walked in after the impact statements were read out. They told us that would not happen - definitely would not happen on that day. Because I rang the two children and said that nothing was going to happen. It’s really a waste of time coming down. You might as well work. I felt really, really bad. It’s like they felt we were trying to keep everything from them, at that time; we didn’t want them to know what was going on.

A. I swore at [the lawyer] a few times. I was just pee’d off at the way we were treated. It’s not right. We’re human beings the same as everyone else, so why should we be treated any different.

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B. They wanted to hold our [court case] off because there was a case in Melbourne being heard . . . and it would have a very big impact on our case. And they got fined a phenomenal $300,000. . . . [The social worker] was the one that told us all this: we’re better off to wait until this court case to be heard and finished with because it would have a big bearing on our case. It had nothing [to do with it.]

A. Not a solitary thing. We were just led on once again. They were fined $300,000 for a death at their place, and the bloke that killed my son was fined $35,000.

B. It was all about other people.

A. His mother, and he’s lost his house, and all this sort of rubbish. But he still had his life. We’d lost one, you know. But his mother was sick, and his niece kicked him out of his mother’s house or something. He lost his job. But he had another job in Melbourne when the court case was on. He gets fined $35,000. I just couldn’t get over that.

B. Not considering we’d been told that this other case would have a big bearing on ours.

A. He pleaded poor. Don’t worry about the poor people that are suffering. I know he might have been suffering too, having a death in his factory. But if he hadn’t of built the stupid thing he built, it wouldn’t have happened. I’ve got no sympathy for him at all. None. No sympathy whatsoever. But you see it everywhere. That’s the whole trouble. You still see it today. Stupidity in workplaces. . . .

B. They really led us to believe that it was a very, very, very serious thing; and this man would have to pay for what he had done. But he doesn’t have to if he hasn’t got the money.

A. He was on two of the biggest charges you could be on: unsafe workplace area, and something else. What he got fined was shocking, I thought. I think there should be a jail term for people who do this sort of thing. Let them feel the same as what everybody else is feeling. Because it’s not right.

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<th>TF5</th>
<th>‘Never done any of the promises’</th>
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A. Not even [our son’s] own boss has rung. Nothing. Doesn’t put pieces in the paper for him, or anything like that.
B. He’s never been to see us. Never done any of the promises.
A. Nope, nothing.

What had he promised?

B. A barbeque in memory of [our son] in front of his shed, so he can have a barbeque Friday night after work... He was going to give me [a stone] so I could take it up and he was going to put a little plaque on it in memory of [our son] and put it up at the cemetery. But, nope - haven’t heard from him. And also, after he was killed, we went up to the shed where he was killed in. [Our children and] two or three people went up there... and took a couple of photos of him and put them up there on the post. And a few days later, one of my other nephews found the photos ripped up and thrown in a rubbish bin. So that’s just what type of bloke he was. If I’d have known it was him, I reckon I might have been in jail now. I would have blew his head off. That’s the way we were treated, all the way right through.

TF6 | ‘We were treated like mongrel dogs’

B. [A.] sent a letter [of complaint] off [to an agency involved in the case] regarding quite a few of the things that had gone on... Their response was that they had handled everything in the best way possible. Really nothing that satisfied what you wrote for.
A. I might as well have used [the paper I’d written on] for toilet paper, that’s all it was worth as far as [they] were concerned. It didn’t really address any of the issues. They blamed the [grief-support worker] for making me write the letter. But it wasn’t her at all. I wrote it on my own accord.

How did it make you feel getting that letter?...

A. I’m just appalled at the whole thing, the whole situation. It’s just an absolute disgrace - the way it was handled, the way we were treated. We were treated like mongrel dogs. That’s the way I felt... You wouldn’t even treat an animal the way we were treated.

TF7 | ‘He walked out a free man and lit up a cigarette’

B. Yes, what a poor life he’d had. Not what we’d lost - not what we were coping with. It was ‘poor me, poor me, poor me.’ I suppose that’s the way the court system works, I don’t know. There was never anything really about [our son]. Not necessarily about us, but about [our son].

What would you have wanted it to have been?

You know, they read out people’s impact statements, and they were pretty upsetting ones, some of them. It’s just like, he walked out a free man and lit up a cigarette. He did. He walked out of that court room, lit up a smoke, and walked across the room. He was probably going to go to the pub and have a beer.

A. He went across the road smiling, as well – after the court.

B. And he only ever, ever really spoke to you that once.

So he heard the victim impact statements?
A. Yes.

And it didn’t to help him to . . .

A. No, neither did the judge. She didn’t really care either. When the barrister was reading them out she just went: ‘Mm. Mm. Mm.’ . . . I know she’d probably read them herself. That’s all she done. She didn’t say anything about the impact statements, about us, or the family, or anything like that. I don’t know why she couldn’t say, ‘As far as I’m concerned, Mr and Mrs ________ and the family are really devastated over this.’ Where she didn’t say one word. All she said was: ‘Mm. Mm. Mm.’ That was it.

So did you feel the statements made any difference?

A. No, I don’t think so
B. I don’t think so.

A. We were told to do them, but it didn’t make any impact whatsoever.
B. It didn’t make any difference.
A. Not an impact whatsoever.

| TF8 | ‘I’d like to meet with . . .’ |

Suppose you had the chance to meet with those responsible, what would you want to hear from them, ideally - not just the company, but anyone who has hurt you along the way?

A. Well, the first person that hurt me . . . was a detective. [After my son] was killed . . . [the detective] walked into my house with my sister and brother-in-law. They knew before [my wife] and I knew that he was dead. His reason was that he thought we wouldn’t be able to cope with it without having my sister there.

B. Quite a few family members knew before we did.

A. It was 20 past 4 in the afternoon when we were told, and he was killed at 19 minutes past 1. And I’ve said enough about the other bloke [i.e. the employer]. I don’t want to meet him ever again. Just despise that fellah, for what he’s done. Of course, [the OHS agency] have hurt us along the way as well. And the court has. We’ve had some support, and a lot of disappointment. . . . [My wife] does want to meet up with the chap that was in the shed with [our son], to have a talk to him. But I don’t know if I can handle it.

B. I’d like to meet with the man that was actually on the site when it happened. He was the one that was working there. He was the last one to know what was said, what they were doing. Years and years ago I lost an Auntie to suicide, and for 30 something years – there was two men who tried to save her – and I contacted these men after 30 years, because it was something that always worried me. So I feel that I need to speak to him. I don’t know when I’ll do it. But we have got his name and his address. I’d like to speak to him. Other than that, there’s no one else out there – [the OHS agency], the man whose shed it happened in. There’d be that one particular person who I would like to speak to.

And what would you want to talk about?
B. Just want to know – [my son] was always a little bit of a sookie child. He always used to say he wanted his mum - no matter what, no matter how old he was. I’ve always had a vision that he’d be screaming out ‘Mum, mum!’

A. Apparently, we’ve heard that [the other worker] ran out of the shed when [our son] was crushed to death. And he’s gone back into the shed . . . and – this was read at the court – the last thing he heard from [our son] was a couple of gurgles, and he was gone. . . .

B. I probably don’t blame the person who was working [with our son at the time]. The fact is we all work for bosses, we’re always told to do something. And he was probably given the job to do, even though he probably thought it was wrong – as it’s part of his responsibility. But that’s the way you used to work. You were given a job, and you went and done it – whether it was right or wrong. . . . [So] if I had to [speak to someone, I would] have spoken to the man who was responsible for the shed. . . . I think I’d lash out, be very angry.

What would you want to tell him?

B. Call him names.

Would you want to tell him what it’s done to you?

B. Yes. Let him know what it’s done to me, and probably the whole family – how it’s torn our other two children really away from us. It’s like everyone’s blaming one another.

And how would that help, to be able to do that?

B. I don’t know. Because it’s changed my ways, a lot - my personality. I used to be different to who I am now. I’ll probably never get that back. There is a lot of anger. I don’t bring it out like I used to. I withhold things now. I’ve seen the change in [my husband]. He was pretty happy-go-lucky, whereas he’s a very, very angry person now. So maybe I’d like to say to him, ‘You’ve got no idea what you’ve done to our family.’ . . . I hope I never, ever have to go through it again. . . .

TF9 | ‘I can’t let it go’

How has [all these hurts] affected your ability to recover?

B. It hasn’t really.

A. You’ve only just really started going back to bingo and that, haven’t you?

B. I’ve just started to have a social life.

A. We were just home-bound. We didn’t want to go and see anybody or anything like that. We started going – well [my wife] is anyway. She’s started going to bingo every now and again.

B. But that’s only happened because a very, very good friend of mine has moved to [our town] and she’s been very supportive; and she’s the one that’s got me to go out of the house and do things. But prior to her moving there I wasn’t doing a lot at all. And it affected my health a lot. . . . It’s just what it’s done to our family. . . . I’ve got all reasons to say, ‘I’m angry with [the employer]; I’m angry with the process; what it put me through with my kids; the way they handled things; [the kids] thought that I was lying to them, keeping things to ourselves.
A. A lot of pressure it just put on everybody.

B. The pressure I was put under was phenomenal. Because for some reason, everything that goes wrong – the kids seemed to blame me, because I can’t fix it. . . .

A. I’m not the bloke that speaks out. I just keep everything bottled up inside. . . . That’s why I’m on the depression tablets. That’s another thing: I shouldn’t have to be on them either.

B. He’s never been on tablets.

A. I’ve never, ever taken tablets. Never had a tablet for a headache or anything. Yet I’ve got to take these tablets for someone’s stupidity. That’s all it was. It was just stupidity. I hope he suffers for the rest of his life, which I don’t think he will – the same as what we have to. . . . I despise that man.

B. Sometimes I say: ‘Let it go’, and he’ll say: ‘I can’t let it go’.

A. If [my son] had been drunk in a car, and hit a tree or a lamppost or something like that, I’d have different emotions. But seeing it wasn’t his fault, it was this bloke that’s done this to him – that’s the way I feel. And that’s it.

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**TF10 | ‘We were offered counselling - for our marriage’**

B. We were offered counselling. We took up on it, and we went to [a relationship counselling service]. But it wasn’t that we were there over the loss of our son. We were there for our marriage. It was about things from our past, how we related to one another.

We used to walk out of there, and [my husband] really wasn’t impressed at all. In the end, he just didn’t want to go because it was nothing to do with [our son]. It was the wrong place to have sent us.

What happened was, in the end, all the visits that we had with them, which was quite a few, [the OHS agency] weren’t going to pay them because they weren’t accredited with [the OHS agency]. Yet the social worker from [the OHS agency] had sent us there.

So what happened was all that money was put back into – well, you didn’t go in the end – I went to counselling for 12 months somewhere else. But all the time we were put in there. We were sent there and it wasn’t even accredited. They wouldn’t pay them. . . . You were very angry all the time we were there weren’t you.

A. Well, it was to do with the grief I was having at the time, not to do with our marriage. . . . It was nothing to do with [our son] whatsoever, or us, really. . . . I said to [my wife] ‘That’s it for me. I’m not going back in there.’ And I never either. . . .

*Did anyone say ‘we’re sorry’?*

B. No, not any answers from that. None whatsoever: just a letter saying that they wouldn’t be paid. All the money was still sitting there for us to take it to somebody else.

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**TF11 | ‘About now would probably be the right time’**

*When do you think a RJ process would have been most helpful for you?*

A. I wouldn’t have liked it soon after. I would have liked a bit of time to elapse, just to get our thoughts together, and even jot down a lot of things first, and then try and pull everyone
together, and then do it I reckon. About now would probably be the right time I’d say, for us, wouldn’t it – if we were going to do it. . . . Not that I really want to do it, but I’d say about now would be my time I reckon.

Why is that, why would now be a good time?

A. Because I’ve had time to think about things.

B. It’s a hard one to answer because you don’t really know, because if you waited until now you might think: ‘No, I don’t want to hear it. You’ve waited too long.’ Or they come at you too early . . .

[My husband] and I have not really met with any of the people that was involved. . . . The man that was working [with our son] never come and seen us, or spoken to us regarding it. The owner has never done it. So what our reactions would be? I don’t know. . . .

TF12 | ‘I wish that could have happened.’

B. There was something that I always felt in the back of my mind that I would’ve liked to have seen happen. It’s not for the money factor. [My son] had some nieces and nephews that he absolutely adored. I really wanted something that they could have put in a trust that they could have, for them, for when they’re older, and say ‘This was from my Uncle’. Because he spent a lot of time with the eldest two anyway, from the time they were born, right through to until he died. He used to show them the Christmas lights, you know, special events.

I wish that could have happened. Maybe it still might, I don’t know yet. When they grow up they can say, ‘This is what [my] Uncle gave us.’ I don’t know why I feel that, but it’s something that I really, really would have liked to have seen happen. . . . [My son] never had children. But he adored his [nephews and nieces]. I just wish that later on in life, they can say, ‘My Uncle got me this.’ Something that they can achieve towards. They’re so young - and so hurt. [Two of them] have just been destroyed by this.

A. Buy them their first car or something like that.

TF12 | ‘It’s our loss.’

A. Why do [the OHS agency] get all the money. That’s what I can’t comprehend. It’s our loss. What do they do with it? . . . Why can’t it be distributed around family members? Keep half of it, but not the whole kit and caboodle. Because we’re the ones who are putting up with the pain and everything. They’re not.

B. If [our son] was mowing lawns for us, we were dependent on him. If he was taking me shopping, because I couldn’t go – . . .

There’s a lot of answers that we never got. A lot of answers. . . . The court case is about [the OHS agency], not about [our son]. It was about [the OHS agency]. Not about us sitting there listening to everything about our son.

We were nothing on that day. We were just people sitting in chairs. . . . They dealt with it, and that was their outcome. We had no say in it. . . .
TG1 | ‘No one took him seriously or believed him.’

[My son] was working in as an apprentice in [the company]. He was bullied right from the beginning from when he worked there. To begin with, he felt that he was a bit weak and should just take it and tough it out. As parents we told him that too. ‘As an apprentice you have to put up with a bit of that stuff.’

That attitude to him, he felt that because we said that, he wasn’t being tough enough. So he stopped telling us a lot of what was happening. Until eventually another girl was bullied too. She reported it, and he was asked about it. At first he denied it, but then he admitted that it had happened.

As soon as he admitted it, he was taken out of the workplace, because they considered it an unsafe workplace. The girl was given a job somewhere else, but he wasn’t. He was just taken out. He felt that because she was a girl - and the sexual abuse was girl-boy, man-woman type of thing - that he was being minimised, his problems were being minimised.

So right from the start, he felt that no one took him seriously or believed him. He became very depressed, and was diagnosed with depression and post-traumatic stress disorder, anxiety. He started smoking marijuana, which didn’t help the situation. . . .

They made it into ‘the marijuana was his problem’, not what had happened to him at work. [Three years after he stopped working] he died from suicide related to the bullying. The marijuana would have been a part of it too, but there were other issues involved. I believe that the bullying was the one thing that, if you took that out of it, he would still be alive.

TG2 | ‘I’m not worth it.’

It’s different because it wasn’t an accident that you could directly [refer to [the OHS agency], but he was on [the OHS insurance] at the time. We’d spent probably 18 months with [a range of different OHS agencies, lawyers and mental health systems] trying to get some validation and righting the wrong for him. But it never did happen.

He always felt that he was believed, because we had got to the stage where his claims were substantiated.

But he was in a mental hospital in Melbourne, and when he was in there somebody came down from [the company] and offered him a $20,000 check to shut up really. He was signed on the dotted line while he was still an in-patient in a psychiatric hospital, which I believe is illegal. He signed on the dotted line, took the $20,000 and blew it, because it was ‘shut-up’ money. He still felt like he’d been wronged.

The legal system itself: [The OHS agency] was still investigating his bullying claim, and they said that they believed it too. But the way the law was at the time, they couldn’t do anything about it either.

After he died we had someone come from [the OHS agency] come to us and explain that they wouldn’t be taking it to court because of the way the law was it wouldn’t work. . . . They couldn’t use [my son’s] statement, because he wasn’t there to be cross-examined. . . .

I argued with the lawyer, ‘But what about fining the company for putting him in an unsafe workplace?’ And she said, quote: ‘It would be a minimal fine. It wouldn’t be worth it.’ That
was just a red rag. That’s what [my son] believed for two years, that: ‘They believe me, but I'm not worth it.’ So when she said that, that just made me so angry. . . .

Even though that man did what he did to [my son] and it was unforgivable, the process [that followed] – ‘We believe you, but you’re not worth it’ – that’s what damaged him.

TG3 |  ‘I’ve done my own type of restorative justice.’

Eventually (it’s been 6 years) I’ve done my own type of restorative justice. I’ve gone to and what I call ‘faced’ all these people who made statements [to the insurer]. It didn’t go to court through [the OHS agency], but the insurance company still had to pay out. The insurance company had statements from all these people trying to make it sound like [my son]’s suicide was because for other reasons rather than his work.

So I had a long list of about 25 people, and I’ve ticked off all but one1 - whittled them down. I went to see them and took the statement with me and said: ‘But you know us. You know this person. How could you say that?’

Most of them were gracious and the questions they were asked made it sound like the answers were different. Some of them wouldn’t face me. . . .

Going to all the people . . . just gave me back some power over myself, not over what had happened. It made me feel that I’m back in control of how this affects me, rather than all those letters and statements saying that we were bad parents and that [my son] was a bad person.

They didn’t know him at all. It was just all this really negative stuff that was made to look like his death wasn’t to do with [work]. And I understood that, but I wanted to face the people who had said it. And I got a lot of satisfaction out of that.

*How did they respond?*

Most of them with embarrassment. [For] some of them, the statements had been written without their permission and not signed. They had no idea that it had been worded that way. One in particular was quite sure that he could go to court and have it rescinded, because he wasn’t at all happy about it.

The psychiatrist’s was probably the best one, because what he had written didn’t really sit very comfortably at all. But when I went and spoke with him . . . it gave me a lot of understanding about how [my son] felt and what had happened.

The only one that I haven’t spoken to is the [OHS agency’s] psychiatrist because . . . he had written really demeaning things about us as a family and what sort of parents we were: that we allowed our son to take marijuana. We didn’t! He was 20 years old. How could we stop him? He wasn’t living at home even.

I haven’t been to see him because I just got to the point where I don’t think it would be worth it. He won’t remember. He won’t acknowledge. What’s the point now? Doing the other ones has given me enough.

*Did they take any action?*

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1 Since this interview took place, the final person on this list has been contacted by the interviewee.
No they never took any action. At the time, we thought we might do something legally. But we decided not to.

_Because?_

The six years is up. We did speak to the lawyer to see whether we could have some of those things taken off the record. But it was just going to cost far too much to do it. And we might not have won. . . .

_What would have helped?_

I took [my son’s] sick certificate in for two years to [his work-place] and I handed it over to the desk to the first girl for 12 months and to the second girl for another 12 months. We talked every week.

After [my son] died, they walked across the street rather than talk to me. There was no acknowledgement that he’d even died. He never got his last fortnight’s pay. Or [his partner] never got his last fortnight’s pay. It’s like: ‘He’s dead. He’s gone. Over.’

I understand that they didn’t know how to speak to me, but a letter in the mail acknowledging his death, anything. . . .

I still see this guy. He was one of the 32. I rang one day and spoke to him and asked him if he would speak to me and he did. I asked him: ‘Was there ever any time that he thought that this might happen?’ And he said: ‘Off the record’ – because he didn’t want to be part of it – he said ‘Yes, there were several times that he thought [that].’

I just breathed a sigh of relief. It was like: ‘I wasn’t the only one that was worried about him.’ I never saw that. I never got that while he was alive. I felt like I was the only one fighting to save his life. But when he said that, he actually did believe that there was a problem.

_Would it have helped - I mean it’s amazing that you took the initiative to talk to all those people yourself – but would it have helped to have someone else . . . to do a lot of the organising of those meetings, and facilitate that?_

Those ones? No, I think I had to do them by myself. But earlier, with the insurance claim: definitely. If [we’d had the help of] somebody who knew what was going on, we would have had [my son’s] money put in a trust and it wouldn’t be gone. But I didn’t know anything about how to do it. We had just lost two of our children. We were filing through the system, no idea what we were doing. . . . I had nobody to support me at all. I guess because it wasn’t an [OHS agency] thing, and we didn’t know about [the grief-support] service. We were just fumbling through the whole lot by ourselves. . . . I was all alone. I was by myself. I never had anyone with me the whole time I was doing all this stuff. . . .

I still actually think it was like a dream. It was still like this didn’t actually happen to us. I can separate it. That’s probably the only way I coped.

But definitely, if I’d had somebody to help me through at first, with the lawyers, [so that we could have known] that we had a choice. We didn’t know that his life insurance could have been paid to his daughter with us as his trustees. If we’d known that, it would still be here. It wouldn’t be blown. That would be something that she would have of her dad’s that she now doesn’t have. . . .
TG4 | ‘He is never having any more of my head space.’

On that list of people [you wanted to see], did that actually include the people who had bullied [your son]?

No, I won’t go there. They will never admit it. The same workplace is still having huge problems with bullying. They’re still dealing with it badly. . . .

One day, I was walking around the supermarket, and he was coming the other way. I just panicked and burst into tears, and ran out of the supermarket.

I decided then that he was never going to get – that he is never having any more of my head space. Occasionally I think of him. Not very often. . . .

[My husband] doesn’t understand how I cannot hate [the man who bullied my son]. ‘Why don’t you?’ Because I won’t give him anymore. He’s already taken too much from me. . . .

Now I would look at him and tell him: ‘You have no power over me.’ I would be able to do it now. But that first time, running out of the supermarket, I hated that he did that to me.

TG5 | ‘I would have pulled my gun on him’

[My husband] works for [a security company], and carries a gun. . . . He got a call saying ‘can you call into the post office [to make a delivery]. . . . He did, and he went in there. . . .

[My husband] stopped, went white as a ghost, shoved the bag to the guy he was working with and said, ‘You do it.’ He went out to the car and didn’t speak to this guy who he worked with for the rest of the trip home. . . .

Finally, the guy asked him ‘What’s up your nose?’ He walked in and [the man who bullied my son] was behind the counter at the post office. And [my husband] said, ‘I would have pulled my gun on him if I just didn’t get out of there’.

The reaction was five years later. He had a gun on him. This was the first time [my husband] had seen him since before [our son] had died. He was frightened of his own reaction. . . .

It was worse because that was his fantasy. He wanted to shoot him. . . . He was put in that position, but he ran out to the car. He just didn’t know what he was going to do with himself. . . .

TG6 | ‘He was given a slap across the wrist’

What happened to [the man who bullied your son]?

He was paid $60,000 to leave the workplace, because he was an embarrassment. That was while [my son] was still alive. . . . He was given a slap across the wrist and told that he’d been a bad person, but that was it.

The lady from the apprenticeship board actually said that she was going to stop him from having any apprentices, and she did. She was the only person that did anything. While he was working there they weren’t allowed to have traineeships or apprenticeships. . . .
[After he was paid to leave] he bought a café next door to McDonalds. Every time [my son] went to McDonalds, he looked at that bloke and thought – he’s living pretty while I’m doing this.

But he was run out of town after [my son’s] funeral. A small town works in different ways. His business just went down - very, very quickly. Nothing violent, it was just word of mouth. People just stopped going there. It was more revenge than justice. . . .

Didn’t matter to me. It helped my husband to know that he wasn’t in town. But I’d already decided that he wasn’t going to have any more of a – I used to say that he’s already taken too much from me. He’s not getting anymore.

I guess he was the beginning of the problem. But the problem was the way it was handled. . . . He was the bully, but the fact that they did nothing; the fact that they tried to shut [my son] up with what [he] called ‘shut-up money’; they believed him and did nothing about it: that was probably much worse effect on him and all of us, than the actual bullying was.

**TG7 | ‘Nobody took responsibility’**

*Did you feel that anyone took responsibility?*

No, no.

*So all the people you talked to –*

No, because the people we talked to were just ‘after the fact’. The statements were nothing to do with him being [bullied. They were] statements that were collected from the insurance company to discredit [my son] and us, [saying that] he was going to commit suicide anyway. It had nothing to do with work. They never spoke to anybody who knew him. They never spoke to anybody at his workplace who knew what had happened. . . . [So far as they were concerned] that was no longer the problem. . . . He was bullied. $20,000. That was over. He became a marijuana user. That’s what they said caused it.

*Did you feel that they took responsibility for making those statements?*

Some of the people did. Some of them were quite uncomfortable with me facing them. One or two just got their back up and didn’t want to know about me. The last lot felt good because I made them squirm. Nobody took responsibility, no.

**TG8 | ‘It’s too late now to be sorry’**

*Any apologies?*

No. None.

*Is that something you would have wanted?*

Not by the time – I’d only just finished doing them a couple of months ago. By then it was just another box ticked really. I had to finish this. I’d started it, and I had to finish it. But along the trip it was six years of doing that. By the time I’d got to the second last one, which was his private psychiatrist, it was just ticking the box. I had to do this because it was the last
one. I was glad I’d finished them and done them. It was like, another thing done – on the journey, really.

**Would that have been something that might have helped, do you think, if the people who were involved had taken some responsibility? I know it’s hypothetical, but –**

After [my son’s] funeral, we had two things happen. We got a phone call a week later from the other girl who was bullied. She had refused to make statements, because she was also offered money. She rang us a week after his funeral and said that she was so sorry, she’ll go back to [the OHS agency] and she’ll change her statement, and tell them what really happened.

It was like: ‘Thanks a lot, but don’t bother.’ And she did. She went into [the OHS agency] and they told her: ‘Too late. You’ve now got two statements.’ They’ll make mincemeat of her. So they couldn’t use either of her statements.

We got another phone call from somebody who’d worked with [my son], and it was much the same. ‘We had no idea, and we’re sorry. We should have done more.’ I just told him to go - it’s too late now to be sorry. Don’t bother.’ . . .

**TG9 | ‘A good thing that came out of it’**

The other thing that happened was I wrote a letter about bullying in the local newspaper, which caused a huge uproar. There were several articles about other people who’d been bullied. . . . A good thing that came out of it was that a committee was formed, and there was a lot of publicity about bullying. . . . and the DVD has been a good thing that’s come out of it.

Don’t know that it’s restorative justice. But along the journey, it’s knowing that something has changed, that something good has come from what’s happened. About 300 companies across Australia have got copies of the DVD; two in New Zealand, and two in America.

*And the DVD focuses on bullying in the workplace?*

Yes. And that was just a really nice thing to happen. . . .

**TG10 | ‘His work played some part in both of their deaths’**

[The grief-support worker] was the only one that acknowledged that [my daughter’s suicide] was related to [my son’s] work. Nobody has since, or again.

Without a doubt, if [my son] hadn’t – excuse me on the tape, but [my son] said, the day [she] died: ‘If I wasn’t f-----ed in the head, she wouldn’t be there now.’ There was some truth in that. . . .

She was being ribbed by her classmates at school. . . . She couldn’t invite kids around. She was 14 when he started to . . . violent. He just changed.

She used to call him ‘George’ [i.e. not his real name]. We’d hear his car coming around the corner, and we could tell by the way he was driving whether it was [my son] or ‘George’. She would say, ‘Uh oh, here comes George.’
It wasn’t nice. It was not the kid that we’d known. She endured that. She couldn’t invite kids home from school, because they would make fun of him. People on her soccer team made fun of him. . . . She was always defending him. . . .

It wasn’t until after she died that [a friend] told us that [my daughter] used to go out and sit in his car in the middle of the night, [in case] he came, if he woke up. Because he used to try and kill himself all the time. . . .

He got a toy gun once, and wanted the police to shoot him. ‘Suicide by police’, I think it’s called. He used to drive erratically, so that he’d die that way. He just hated himself, because ‘What’s wrong with me, that everybody believes me but they won’t do anything?’

So [my daughter] would sit in his car, so that if he did do that, he wouldn’t drive anywhere. So she protected him.

I guess part of [her] death, was: [the OHS agency] had finished their investigation, and they told us they would be making a decision in the next couple of weeks. She died in that couple of weeks. She didn’t want to be around to see what might or might not happen: to have it all made public.

So that connection has never been acknowledged?

Not by anybody but [the grief-support worker].

It seems so obvious.

Yes. . . . I don’t blame them for all of it, but there should have been some acknowledgement that his work played some part in both of their deaths.

Is that something that could still happen, or is it - ?

It’s something that possibly should happen, but it probably never will. . . .

TG11 | ‘There was some justice’

Because we didn’t actually get the [insurance] money: it went to his partner. I never felt guilty for profiting from his death. So there was some justice, satisfaction in that. I was actually able to take all my diaries and make sure everybody knew what had happened, and they had to pay 75% of the total death benefit.

So somebody had to pay, and we didn’t benefit from it. So that gave me some justice too, instead of feeling guilty about getting paid for it. . . .

TG12 | ‘Be aware of how you treat people’

Suppose you had the chance to meet with those responsible, what would you want to hear from them, ideally - not just the company, but anyone who has hurt you along the way?

I would actually like to be able to speak to the people at [my son’s] work, both the ones that worked with him and the human resources department. Not as a blame thing, but to say: ‘Be aware of the way you speak to people, the way you handle things. Because this can happen to anybody. [My son] was a normal young man before he worked there. What happened to
him there, and the way it was not dealt with properly was the result of the way they did it... Not to go there and say: ‘It’s your fault that my son died.’ But to say: ‘Be aware of how you treat people, and hopefully learn from it.’

_Have they changed their policies now?_

On paper... They’ve changed all their policies and it’s word-perfect, but they’re still behaving the same way. They still cover up incidences.

There’s a bullying incident that happened recently. The person who put in the complaint was told: ‘Well, you can always move.’ So they haven’t learnt anything. They’ve ticked all the boxes and done everything according to the law, but haven’t changed....

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**TG13 | ‘They had the power to stop it’**

_When would restorative justice have been most helpful for you?_

I think it could be done in two parts, like a letter acknowledging the death. Because ours was different: we didn’t have a legal system. I would have liked to have seen some sort of letter from [the company] saying they were sorry about [my son’s] death. Not so much taking responsibility, because they’re not likely to anyway, but offering: ‘If there was a time that you would like to come and discuss it or whatever’.

[In terms of meeting with them], it [would need] to be a little bit later so you could get some of the raw emotions past and have time to think about what you wanted to say.

I wouldn’t want to do it in a blaming way, because there’s no point. And it’s different... [a person at work] bullied [my son]. But from that, [my son] made choices about the way he handled it. He made the choice to smoke marijuana. Had he not, he may have been able to mentally handle it a lot better. So it wasn’t all one person’s fault.

But to have some chance, an opportunity to say to, not so much [the man who bullied my son], but the people who stood by and watched it happen, and allowed it to happen, to say to them that they had the power to stop it.

_And would hearing them acknowledge that be important?_

Yes, because if they acknowledge it they might stop it next time. You can’t change what’s happened to us. But if they understand it and acknowledge it, then they may think twice before letting it happen to the next person.

But while... everyone blames [the man who bullied my son, saying] it’s all [his] fault, they can sit back and say, ‘It wasn’t me’. Even though we know they could have stopped it. That workplace had a very long history of bullying. That man had a 20 year history of bullying. Some of the people who’d worked with him had worked with him for 20 years. [They] stood by and laughed at his silly little jokes. They were part of it.

_So hearing them say ‘yes, we...’_

‘We screwed up.’ Yes. ...
The lawyer said to us that the only way you can get anything out of it is if you were mentally and emotionally damaged. And he said: ‘Quite frankly, you’d never prove it.’ Two of your children just died – didn’t affect you at all!

**What did you need for proof?**

They had to have 30 points on the American psychiatric scale to prove permanent psychiatric damage. They judge that in an hour interview, in the first couple of months after the person’s died. We are permanently damaged. . . .

I gave up my life. I gave up my work.  I’ve given up my future to look after my grand-daughter, because [my son] died. And it hasn’t impacted? . . .

And the Kennett government changed the pain and suffering claims, so you can’t even claim that. Not that you want the money. You just want that acknowledgement that this hurts. . . .

**TG15 | ‘A beginning of feeling like people were listening’**

I came down here, we were here in this room. It was [a meeting with the director of the OHS agency and an OHS lawyer] . . .

During the time that [my son] was unwell, I had done everything. Absolutely anything and everything that I could think of. The only thing we hadn’t done was go public, and I was too frightened to do that because I thought he would take his life. . . . I had a list of all the people I had been too, and all the dates – because I diarised everything.

I gave it to [the director] and asked him to please explain how this got to that. He couldn’t. He was just flabbergasted. He couldn’t believe that I’d been to the [OHS] minister, and I’d been to the local [OHS agency], just anything and everything I could possibly think of. Everybody said: ‘That’s dreadful that that happened to him’. But nobody did anything that made a difference.

Even though [the director] couldn’t answer the question, just the fact that he admitted that somebody screwed up, or that this shouldn’t have happened that way, was probably a beginning of feeling like people were listening.

*So there was an acknowledgement of wrongdoing?*

Yes. . . .
The Journal

TH1 | ‘A loss that is so intense I feel numb’

[My husband’s] death has given me such a sense of loss you would not believe. A loss that is so intense I feel numb.

From the moment that his death happened . . . the amount of people that have surrounded me has been overwhelming. The funeral for [him] has been very large. It would have been at least 600 people. I knew that he was well loved but it even surprised me with the amount of people that have come to wish him farewell. [My husband’s] brother . . . gave me an insight to the part of [his] life that I never knew. His love of the bush and family was always there. [His brother’s] copy of his eulogy was brilliant. . . . [He] always gave people all he could all the time and now they wished to give something back. . . .

How do you explain the sense of loss that we all feel? [My son] has been finding every excuse that he can to be out of the house. I am very lucky that the large network of his friends is keeping in touch with him every movement. Our girls are so lucky that they have such wonderful men as their partners. But I feel so very alone.

Went up the street to do some shopping. . . . I saw an old lady and gentleman holding hands and felt totally devastated. This is something that we will never be able to now do. Ended up in hysterical tears and went to [see my friend]. I was at [her place] for a long time. She explained to me that a lot of things like this are going to happen to me during my time of grief. . . .

As I sit here now my heart is filled with emotion for the loss of life in Bali. I can relate to how each of the families feels and I empathize with each and every one of them. The loss that they are now feeling is something that I can relate to very easily. The question as to why their family is the one that has had that particular person taken, why has this happened to only them. I cannot answer that question as I am only just starting to come to terms with that same feeling myself.

TH2 | ‘Another day alone’

The tears that occur at any time of the day or night. The feeling of being totally on your own. The feeling of being alone and when you do not want to go to bed at night because your loved one isn’t there. Or not wanting to get up because you will be facing another day alone.

People say to me that time will heal this ache in my heart. But as time is moving along, I am finding that I am becoming more and more lonely. . . .

I miss [my husband] all the time; he is constantly in my thoughts both day and night. I find it very hard to sleep, and constantly walk the floor at night. During the day I try to keep my mind occupied by trying to keep busy. But nothing seems to help. . . .

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1 The first section of the transcript below is an (edited) summary of a journal in which the interviewee recorded “some of the stuff ups that have occurred during the last 9 years.” She provided this material to the researcher on a memory stick. The second section includes a transcript of key aspects of the recorded interview, that relate more specifically to her views on the three working hypotheses of this consultation.
The void in my life becomes so over-bearing sometimes I cannot understand why me. I don’t know if it’s because [my husband] is no longer here or if it’s just that I feel the emotion more. Maybe that it is just that I have to try to bear the major ups and downs by myself.

I think the part that is hurting is that I don’t have the comfort of having someone here. . . . Please don’t get me wrong: I have a few friends. But it is not the same. When you go through this alone, there is no one there to comfort you or hold you, or to wipe away your tears. . . . [M]ost people have their own life to lead and may not understand how much having contact with other people actually means to you. . . .

TH3 | ‘Will I ever regain a normal life?’

My tears have subsided for a while and I am once again trying to come to terms with what has happened. My life has never been what most people call a normal one. But the one thing that I have in my life is that the joys that I have are a definite blessing. . . . The only thing that I wish for is now is that my highs were not quite so high or that my lows were not quite this low. Somewhere there must be a place in which to rest and regain some sort of average life. Maybe where I can just stop and just smell the flowers. . . .

I hope there is somewhere where I can regain some sort of balance and just recharge my batteries before the next roller coaster hits me. I keep telling myself that ‘you are never given something in your life that you are unable to handle’. But the question that I keep asking myself is that if ever the things that I have so far encountered will subside, will I ever regain a normal life? . . .

The one thing I have noticed this year [is that] I have become more honest with myself. I had put a lot of blame on my friends for abandoning me. I know now that that has not been the case. While I have been waiting for something to happen in regards to [my husband], everyone else has just got on with their life. . . . I have been waiting for something that may never actually happen. Even . . . my sister’s husband seems to be getting on with his life. I just seem to be plodding along.

TH4 | ‘What I miss most of all’

When you lose someone through death it is always hard. In the last couple of years I have lost my mum and sister. One of my best friends whom I had known for almost 30 years, in a way that has also affected me as well. But the most important has been [my husband]. When I lost him, my whole life changed. I have been through so many emotions that I still find hard even now to come to terms with.

Little things like just having to drive to a funeral last week. I just couldn’t bring myself to do it. Not so much the drive there that wouldn’t have worried me, but the drive home on my own for such a long distance. I know my mind wouldn’t have been on what was happening on the road but on what has been happening to me. That would have put other people at risk as well as myself.

I know my self-esteem has suffered a lot because of his death and also my self-confidence, and this is something no one can help me with. Even as a young girl my dad told all of us girls that we would never amount to much and I really believe even now this still affects me in my own mind. I have tried to make sure my kids were consistently told how great they were, even for the smallest things they did. When I look at them now they still have their own
problems and I try to help them any way I can. But it would be really great to have that back up to say: ‘Hey, you are doing a good job’.

I miss not having someone here to give an opinion on what else to do or what not to do or even another way in which to do things. Just the ability to be able to discuss anything that is on your mind, on any given day in your normal day-to-day life. I really think this is what I miss most of all. . . .

TH5 | ‘The police never turned up’

I’m still very angry that the police never turned up [to tell me what happened]. When I eventually did ask about it, I was informed that when they arrived they found I already had family here. Well, how could they know that I had family here? No one turned up. . . . So, it was not a very nice situation.

TH6 | ‘No money coming in - just money going out’

Went to [the benefits agency] and they have informed me that they have to get their [OHS insurance] department to OK any payments. I have no money coming in just money going out. Thank goodness I have always kept a well-stocked refrigerator and pantry.

Everyone who is coming to visit seems to be bringing food. It just seems as though they realize our situation although I haven’t said anything.

TH7 | ‘That happened to be the day we buried [my husband]’

Had a letter from the bank to say a late payment for the house was due and that my account was debited with $37.70 for a late payment. I didn’t even realize. I rang the bank and said that there was money in the account so deduct the amount owing. Asked what day the house payment didn’t go out and he said the last one. Told him I had the ATM receipt and it wasn’t the last one. He checked up and found out it was the 31st of May. That happened to be the day we buried [my husband].

I feel devastated. It is as though my whole world is coming apart. How long is it going to be before the payments stop? The gentleman said I should have informed the bank of [my husband’s] death. I told him I had, also that the letter I was holding was sent to [my husband’s] estate. . . .

[D]ropped into the bank to find out how long it is going to be before they stop the house payments. I saw a different bank manager. . . . She told me she had no idea of what I was talking about. I explained that [my husband] had died and wondered how long it would be. She said she didn’t have any paper work as the manager I saw was now permanently at [a different branch]. When I explained, she immediately got on the phone to the loan department and put a payment stop on. She explained that the next payment might still try to go through but not to worry. . . .
TH8 | ‘Why would you insure a part time worker?’

Received a phone call to say there was a muck up in the paperwork regarding the insurance on the house. [They insured it under my name, not my husband’s.] I asked them: ‘Why would you insure a part time worker and not a full time worker?’ It seems there was some sort of muck up in their administration. . . . [I later] received a phone call from the bank to say that our application for the insurance on the house has been [approved]. . . . I still can’t figure out how such a muck up could have occurred.

TH9 | ‘The staff could not believe it’

Would you believe that I received a bank statement to say that I owed almost $98.00? When the housing loan was paid off . . . by the insurance company, it left a balance of $17.67. I was never informed of this outstanding amount. Since then, they have added an increase of interest on the account and also accounting fees. . . . How can an insurance company pay off a loan but not fully finalize it? Also, why was I not informed that there was an outstanding debt? I have rung the loans department at the [bank] and informed them I was not very impressed [and] wanted to send in a letter of complaint . . . . My branch manager has informed me she . . . will send my letter of complaint through the internal mail. . . .

I walked into [my] branch today. Most of the staff . . . know about the ongoing sagas that I have previously encountered. . . . The staff could not believe how such a major error could have happened.

TH10 | ‘Too young to be on the widow’s pension’

I rang [the benefits agency] to [ask] what I had to do after the bereavement pension finished. I was informed that I was too young to be on the widow’s pension and that I had to get a full time job. . . . [But when I later explained this to my new council worker, she] looked at me as though I was silly and said ‘but the widow’s pension starts at fifty’ and . . . that I was entitled to it. . . .

The [widow’s] pension has arrived. I opened the mail and received a statement [of] the amount in it. . . . There is nothing else. There is no accompanying letter to explain anything. . . . I do not know when I am being paid or if it is fortnightly, monthly or quarterly. . . .

TH11 | ‘[M]y privacy has been invaded.’

[It’s been 4 months since my husband’s death]. I have been on tenterhooks all day as [the OHS agency] was making their decision regarding my [insurance] claim.

Got home . . . came into the study [and] found some drawers open and a case out of place. I felt something was wrong. I went into my bedroom and found the dressing table draws open. Realized someone had been inside. Went to the top draw in my side table and found only empty jewel boxes. Rang the police and they were here shortly after. . . . I feel my privacy has been invaded. I have used the word ‘violated’ when speaking to people, but I don’t really know if that is what I feel. . . .
The [insurance] assessor was really wonderful. Later that afternoon, I received a phone call too from the jeweller to say my claim had been approved. Each of the girls now has a ring to remember both their father and grandmother by. [My son] has got a gold chain. I watched their faces as our girl’s chose the rings they wanted. When I gave [my son] his chain his face lit up. After such a low feeling after the robbery, it was a good feeling to be able to do something for our kids.

TH12 | ‘How do you explain a tone of voice?’

Went to [the benefits agency] today. . . . [A] council worker . . . asked me about the superannuation. I informed her nothing had come through yet. Her reaction was: ‘Why not? That is why we give you three months to get it all cleared up’. I said it was all in the hands of the solicitor. How do you explain a tone of voice when you are already at a loss?

Cried when I got to work and ended up not doing my shift . . .

[It was later] explained to me that [the worker I was supposed to have met] had been sent home sick and had passed away only a couple of days later after a heart attack. [So] the staff at [the benefits agency] were all very distressed during that time. . . . I now feel I understand how [the lady who spoke to me] would have been feeling at that time.

TH13 | ‘The originals have been lost’

Went to the solicitors . . . [who are] looking after the super and stocks for me. [They] requested the original certificates for [my] debenture stock.¹ I informed [them] that I had dropped them off about 3 weeks before. . . . Towards the end of the week I received a phone call from the solicitors’ office. [They asked] whether I was sure that I had dropped off the original certificates. This would be about right, with everything else that has been happening. The originals have been lost.

TH14 | ‘We may get a closure sooner than I expected’

My emotions are running very high tonight. I have received a letter from the solicitor today to say that the first court date has been set . . . . What will happen on that day is what I do not understand. [My solicitor] has told me that the first court date would be a major starting point regarding where this is all heading.

Is this it? I am scared, frightened, elated, happy and worried. I am scared because I do not know what will happen. Frightened because of what will be said in relation to whether this may be the finish, or whether the judge will say he believes we have a case and a new court date will be set. I am also elated because it has come to a court date so soon. Happy because we may get a closure sooner than I expected. And worried about how this will affect all of us in the near future.

¹ This is stock issued under a contract to pay specified amounts at specified intervals. – ed.
TH15 | ‘I felt humiliated’

The day before [the court case] I had to meet my barrister. He was an absolute mongrel in the way he treated me. I felt humiliated, and was an absolute mess after. I cried on the way home. The only thing that kept me calm was the comforting feeling of [my friend’s] hand on my shoulder. According to [my friend] he placed his hand on my shoulder because he thought I was going to get up and hit the barrister.

On reflection now, the only thing I can think of was that he was testing me on how I would have responded if I had been placed in the witness box. But that never occurred to me at the time.

TH16 | ‘I may have to give up teaching’

My life has not been the same since losing [my husband]. Each time I start to feel good about myself or where I am heading something else kicks me firmly from behind. . . . The part that is really hurting is that I may have to give up my swimming teaching for a short time until I can get everything sorted out. My teaching has always been such an important part of my life.

TH17 | ‘How long is the inquest supposed to take?’

We have not gotten any closer than we were before with the coroner’s inquest. The last letter from the solicitor said they were told all statements would be in by the middle of March. I rang them and the statements were still not in. Up until now I still haven’t heard if they have been received anything yet. . . .

We are now two and a half years along since [my husband] was killed and [the OHS agency] has still not assembled their statements. How long is it supposed to take?

TH18 | ‘How do you destroy a friend?’

I know that there is a possibility that I may still have to go to court over [the employer]. . . . The only thing that I am a bit scared of is that the friendship that has developed between us may be affected in some way, as we talk about a lot of things - not just what has happened. . . . [He] has been a good friend for a long time. This is a man I have known for coming up to 16 years. . . . I have always known it would come to this but you do not really want to admit it or even think about it.

[The employer] has been speaking to his insurance broker who has now told him that he was not covered. . . . [The employer] said that he might as well bring [his business equipment] down to me and I can do what I want with it. . . . I cannot do that, as I have known this man for a long time. How do you destroy a friend? I’m not just talking about [my husband] and [my son’s] employer, but someone we have known for many years. I have been waiting for a long time to get some sort of finalization with this. But this was not what I expected. . . . In all honesty I could not even possibly think about destroying someone who has helped me through some extremely hard times in the last couple of years. . . .
I feel so sorry for him. To have gone through what he has been through already and to now have to defend himself is quite hard. One thing that I know is I thought I had it hard. But he must be going through hell. . . . [P]eople do not understand what both he and I have been through. They will never be able to comprehend how come we are still such good friends.

TH19 | ‘The solicitors apologised’

I rang my solicitors and informed them I was going to be away in November . . . . I asked for my solicitor by name only to be informed that he had retired. [W]hat is really annoying me [is that] I was not given a name as to whom I would be now dealing with; nor have I been informed as to when he retired. . . .

[Five years later] I received a letter from [the solicitors] apologizing for the problems I had with them during a time when I needed so much help. In this letter he explains that my case was transferred twice, but more importantly that he regretted that, in the last instance, I had not been informed and [that] some of my calls had not been returned. They will be speaking to their staff to make sure that this does not happen again.

TH20 | ‘I should have been informed’

What happened at court yesterday is something that you see on TV, not the things that you believe happen in real life. I have never been so angry. . . .

While we were sitting outside the courtroom a lady from the OPP . . . asked me if I was there for the ongoing case and how was I involved. I informed her that it was my husband that was killed. With that I was shuttled into an office where she proceeded to ask me if I wanted to give an impact statement. I asked her what she was talking about, as I had no idea. I informed her that the only reason I was at the court yesterday was that I needed some sort of closure with what had been happening and that [the employer] had been the only person who had been keeping me informed as to what was happening with him. [She] said that was not the way that it would be done normally and that I should have been informed of all the proceedings by [the investigators] and also about what was occurring. . . .

The prosecuting QC was then brought in. Once again I was asked if I wanted to give an impact statement. This was a statement of how the death of [my husband] had affected me. I couldn’t, as I didn’t know what to say. . . . By the time I went into the court, I was in a mess. The judge decided that he wasn’t going to give sentencing on that day and that he was going to postpone it for another week so that I could read through all the documentation. . . . I cried a lot in that courtroom as I realized that I should have been informed well in advance about all of this. . . .

[It’s been almost 4 years since my husband died]. For such a long time I have been without any counselling, as I believed that I was going along quite well in coming to terms with what had happened. Now it is all back on the surface and it feels as though I am once again living through hell. This has made me very angry, and depressed, and this has also made me very annoyed to be excluded for such a long time.
TH21 | ‘The investigator apologised’

After the court . . . [the investigator] rang me to apologize. I was now getting to the stage of being really angry. I told him what I thought of him, of [the OHS agency] and of the way I was informed on the day of going to the court and that it was only because [the employer] who had been keeping me informed of what was happening that I was there. I also asked him how many other people were out there that they had never informed and how angry I was regarding everything that had happened; that I was intending to inform the media of everything and of the bureaucratic bungling that I had been subjected to.

He was very apologetic regarding all of it and [said] that he would like to catch up with me so I could read all of the documentation that I should have already been able to see. . . . He also wanted to bring a counsellor with him as well. I said that was ok. . . . [So] I met with [them] and it has created more confusion in my mind. I am still so angry about everything that is now happening. [The investigator] apologized to me once again on this day. . . . I have asked for a letter of apology and also asked if they could answer some questions that I put in writing for them. . . .

The letter I received from [them] as an apology has said that it was a ‘misunderstanding’ on their part and that was why I was never informed. This is not just a misunderstanding, but to me a great part of what I should have been included in. This letter answered some of the questions that I wanted to find out about. Like that if some process could be implemented so that no one will ever be hurt again as much as I have. I have now been informed that there is now in place a process where the family will be asked to nominate a spokesperson to act on their behalf. This will then be followed up at different stages throughout the investigation. Thank goodness for that. . . .

TH22 | ‘I should now be going through the healing time’

I could not understand why it had taken so long to eventually go to court. I believed that a lot of blame could be put down to [the investigator] going on sick leave for 7 to 8 months that contributed to the length of time it had taken. . . . [D]uring the time that he was off why didn’t another investigator look at the case file to continue the work that should have been still going on? If that had happened then it would not have taken so long. Someone else may have picked up that I personally had never been contacted as well.

I believe that [addressing] this sort of oversight may have had a totally different outcome. . . . I would never [have] been put through all the extra stress that has happened in the last three months; that the whole process would have been completed; and that I should now be going through the healing time - not trying to come terms with this new setback. . . . When you are already feeling vulnerable and get treated that way you believe the world has not only come to an end but everyone and everything is also against you as well. . . .

How do I feel? Bewildered, confused, upset, angry and sometimes just plain lost. Why has this happened to me? I know you are never given more than you are able to deal with, but I wonder just how much more is there.
[The social worker] has informed me that she wants me to meet up with [the investigator] again and that he is still upset because of never informing me of the court cases or of the whole investigation as it was occurring. I have agreed to meet with him . . . . My apprehension for this up and coming meeting is large as I want him to understand what I was feeling the last time we met. I hope my emotions stay in control and I do not end up crying again.

What I am hoping to achieve is that maybe I can make them understand how hurt you feel. In my case it has been in every government department, my bank, [the benefits agency] and my lawyers right across the board.

I met up with [the investigator] and [the social worker] yesterday. When they arrived I tried to control my feelings as best as I could. With every part of my emotions in turmoil, I spoke about what happened in the court . . . when I was confronted by OPP and how I was so unprepared for what happened. That I have once again grieved for [my husband]. But more importantly I was grieving more for not having been informed about anything that was happening - that it had all been taken out of my hands.

[The investigator] informed me that he was a team leader and had been constantly informing his investigators of the importance of keeping the families informed of what was happening. He was so devastated about how I was forgotten. Funny enough, I actually believe him.

One other thing that came out of my talk with [the investigator] is that during the 8 months he was off on sick leave (this was in the middle of the investigation), his son had fallen out of a tree and is now disabled because of it. [The investigator] didn’t come straight out and say what had happened to his son, but it was some of the things he said during our conversation that made me understand. I asked [the social worker] about it afterwards and she confirmed that that is what had happened.

[The social worker] has just left after making me promise not to open the investigator’s reports which she dropped off earlier today. . . . [S]he explained that some of it was very explicit and so she did not want me reading it on my own. . . .

Quite a number of times I have gone to open it and have had to stop myself. It is such an amazing feeling that at long last I have something here that may fill in a lot of the spaces in this investigation that only up until now has been hearsay and parts of what I have heard from other people. . . .

I have sent a message to [my friend] to let him know the reports are here. [He] is a great mate and friend and also a policeman. He came over when he knew that [the social worker] was going to be dropping the report off. He . . . said he would go through it with me and that there may be areas where he would be able to explain why the investigation would go into a certain area from the investigator’s view. . . .

I feel as though I have detached myself from what I was reading as though I was only reading a book and not reading about the way [my husband] had actually died. . . .
Tomorrow I will once again go to the beach to place my red rose in the water, as we are now up to 4 years since [my husband] died. It seems to be only yesterday that all this started. I still feel as though it is still only a bad dream that never seems to end.

TH25 | ‘If this talk can help then it is something I have to do’

When [the social worker] was last down we talked about me talking to some of the investigators, as she believes it will help them understand how you feel when a work death happens. [The investigator] said he would like me to talk to the lawyers as well. We decided it might be best if I talked to his team first as he believed it would be good for them to hear from me.

How do I feel about this? In some ways very scared. All I am is someone who is trying to still come to terms with the loss of [my husband], someone I truly love. But if this talk can help anyone else, then it is something I have to do. . . . I do know that when I talk to the investigators that I will be trying to make them understand some of the things that have happened to me.

I have believed that [my husband] was taken for a reason. If this is it, then all I can do is try to tell my story to the investigators that will be dealing with the families in the future, while they come to terms with what is happening to them. If the investigators can have more compassion or know of some of the pitfalls that may occur, then so be it. If this has been the reason I have had to go through what I have since [my husband’s] death, then there will have been some reason for all of this to have happened.

Since making my decision to do this talk . . . I have been feeling a lot calmer. I decided that this was what I needed to do to give me some of the closure that I have been waiting for. I am sincerely hoping that somewhere down the track that someone will benefit from what I will be saying to the investigators. If someone doesn’t have to go through what I have been through then it will be worth it. . . .

I have just completed my talk with [the investigators]. I feel it has gone very well considering I have never done anything like that before. . . . On the way home [the investigator in my case] said he feels that his investigators will never be the same in the way they feel about their job. He believes that I have made a difference to their way of thinking. . . . As to how I feel, I feel as though I have at long last talked to some people in the [investigation] area and that maybe I have made a difference to the way they will now be looking at how they conduct themselves when they eventually meet up with the families. I am happy I have done this and I may be asked to do another one yet you never know

TH26 | ‘Will this never end?’

[It’s been 7 years since my husband died]. I have just [rung the Coroners court] and been informed that they are waiting to see if [the employer] is going to put in an appeal against the court decision. . . . I was also informed they are waiting for [the OHS agency] to send their paper work.

Once again I am still waiting. Will this never end?

Once I hear from them I will be able to close this particular chapter of my life and forget about length of time it has all taken.
The Interview

TH27 | ‘Grief is not like bottle you can put a stopper on.’

Can you explain how all of these hurts along the way have impacted on your grieving process?

Continues it: you live with it every day. Your first 12-18 months is probably the worst, because this is when . . . most of this is happening. Each time that you’re forgotten or something else happens, it brings that stress factor and you re-grieve. There were stages where, [after an] incident, I was still grieving three months later. I went back through the whole process again. . . .

[Grief] is not like bottle you can put a stopper on. . . . Each time something like this happens, it brings it up again. It makes you feel like you’ve been forgotten once more. The grief is with you all the time. You just keep it fairly well hidden. It’s not until something like what’s happening now, with the Coroner’s court, that all of a sudden I’m re-grieving again. Maybe not to the same extent as before, but it is still grief - and it’s still stress. . . .

The grief of losing [my husband] is here. Nothing’s going to help that. But I will learn to live with that, without [these additional hurts]. The stress and the grief re-appear. It may take me 24 hours [to recover]. It may take a week. It may take longer. I don’t know. . . . It’s as though you’ve been suddenly dropped into this whopping great black hole. Every time you just get your fingers on the top rim, some bastard kicks out a rung; and once again you’re at the bottom of it. Once again I’m climbing back out. That’s the way it works.

And all of that stops you from doing what you need to do.

Absolutely, yes. I get to a stage where I start enjoying life, and something like this hits again. You know you have your times, you have your Christmases, you have your anniversaries, you have the birthdays, or the Father’s day, or the time when you’ve got a major crisis in your life, and you just want to hang on to that person. And they’re not there. That’s the way it happens. Nothing you can do about it. . . .

I can understand why people commit suicide. I really can understand it, because you are put to the point of being so stressed that you feel as though there’s nothing you can do. You drive down the street, and you pull over, because you’ve got no idea where you are: a road that you travel every day, to and from work. . . . Your brain just isn’t there. You’ll be driving and you’ve suddenly got tears rolling down. There’s no reason why. . . . It can hit at the most ridiculous times. I can remember the first Christmas after losing [my husband]. I went and bought all the Christmas presents for the staff, and as I went through the checkout, I had bought a shirt for [my husband]. And I picked it up and went: ‘I don’t want that’. Because that was the system you were so used to. And you walk out, carrying your bags, and you’ve got tears rolling down your face. That was seven months later. . . .

TH28 | ‘Did they take responsibility?’

The people who have done these things, how can they take responsibility?

I don’t think they do. I really don’t believe that they do.
I think with a letter of apology like this [from the investigators], I think it is part of the process they go through. They know they’ve done the wrong thing. But they try to cover their own bum (excuse my expression) by a letter that, to me, should have put a little more heartfelt into it. You know the stress factor that they put me back through again was probably as bad as losing [my husband] again.

What would have been a better way of approaching the apology?

What I expected was not just a brief [apology] at the top of the letter. A little bit more in depth; a bit more explanation as to what had occurred would have been nice. . . . I think it would have been nice to have had maybe a little more personal in it . . . because they put me through hell. And the words at the top of the letter is all you’ve got. . . . That letter to me is totally impersonal.

Would it have been better if they had met with you?

I did meet with them [before the letter was sent]. . . . [But] I really began to wonder why [they came to meet with me]. I can remember thinking it when I was talking to them: ‘Are you here to appease me? Or are you here to apologise? Or is it because I threatened the media with you?’ That was running through my head while I was crying.

So you didn’t know why they were there, and there was good reason to be suspicious?

Absolutely.

So any kind of apology they were making, in your mind, it wasn’t clear to you . . .

I couldn’t even tell you whether they gave an apology - on that day while they were here - or not. I really cannot remember. I can remember parts of it. I can remember pacing the floor. I can remember walking backward and forward. I can remember [the social worker] handing me a grief pack, which I thought was wonderful – getting this [more than 4 years after my husband died]. . . .

[On the other hand, since that meeting with them] the [social worker] has been a really major support. They organised for me to do a lecture with the investigators. And I spoke to them. . . . From what I gather, there’s been quite a difference that’s been in place because of it. So that’s a good positive. . . . Very rarely do they see the face of someone it’s actually happened to.

So they’re not seeing the human impact of what they’re doing?

Absolutely. Look I can understand, because the stress levels of the investigators must be large. To have to front a family and have the family question what happened, why did it happen, what did they look like? For the investigator themselves, that must be stressful too and I can understand that. But maybe they need a social worker that - not the investigator themselves – but put on a large team of social workers to deal with seeing the families. I know that they have only two girls, both working part-time. For the number of deaths that have occurred in the last couple of years, I think they need more. Absolutely. Maybe that’s the way to go. I don’t know.

[And the other incidents?]
The letter of apology from the solicitors I believe was heartfelt. It wasn’t the wording that made it heartfelt. The gentleman concerned was really upset because that had happened.

The police I’m still very angry about them not turning up. But I have found out that if they do turn up and you’re not home, they tell the next door neighbour so that, as far as they are concerned, they have informed you – which I didn’t know. Yes, I was angry about that one.

Do you feel like [the employer] has taken responsibility?

Oh, absolutely. He was down here from even the night it happened. . . . He made sure that his then girlfriend was down here within that first 20 minutes of me being on my own. He didn’t need to do that. So that side of it, yes. . . . It wasn’t financial responsibility. It was definitely emotional responsibility. Because financially he couldn’t run his business and financially support me too. It doesn’t work that way. [He once] said, ‘Maybe I should just bring everything from my business and drop it on your front door step and you can do what you want.’ Because he was hurting too. Which makes you feel very vulnerable as well. I don’t want to destroy his business. I wanted some form of satisfaction to know that it wasn’t going to happen again, especially as my son is working in the same industry, in the same business. . . .

[In terms of the incident itself], there are a lot of things that shouldn’t happen. Where do you draw that line? Who has to take the responsibility? The responsibility is on the firm, guaranteed, on the safety of their workers. But the worker also has to be responsible for their own safety too. If you’ve got a worker, as in [my husband’s] case, who walks into an area that he [knew he] shouldn’t have been in . . . he’s got to take some of the responsibility too. . . . Where do you draw the line?

The bank took responsibility of making sure that everything was stopped, eventually. But initially, no. . . . Once again, it’s something that could have been avoided if their staff or manager or whoever it was had been informed what to do.

[The benefits agency]? I think [they] need to have a process where they have someone who is emotionally able to deal with [grief-stricken] people. I spent an hour and a half on the phone trying to find out what happens after the bereavement pension finished. I was transferred, I think there were 10 departments, before someone said ‘Well, you’ve got to go and get a full time job, basically.’ . . . You don’t need that 3 months after losing your husband. Or two months after losing your mum. Most people, it takes a good 12 months [for] the grieving process to start subsiding slightly. I had a double whammy in a month. And then to be robbed again three months later, you know, it was a triple whammy. So there are areas that can be addressed . . .

Is there anything else that you would want from the people who have treated . . .?

I think everything that can be done, has been done at this stage. It would have been really nice to have had it wiped off a couple of years ago, and have it all completed by then. But to come this far down the track and still find that things are going wrong. . . . I’d been told about a possible coronial inquest since day one. Since the first day I saw my solicitor, which would have been 4 or 5 weeks after I lost [my husband]. And here we are, seven years [later]. How? Why? . . .

So would you want an explanation for why it’s taken so long?

I think you’d be looking at so many different organisations. And I don’t think they know. . . .
TI1 | ‘It’s a life taken away for no good reason’

Not following O H & Safety by this employer killed a man that was loved. He had three children. He was married. He was struggling. He’d just built a house. He’d been building it for 15 years, and they were laying the carpet that week. He was just about to get into his house that he had built himself. That was cruel. That was really cruel. . . . His kids: he’s never going to walk his daughters down the aisle. He will never get to know his grandchildren. It’s a life taken away for no good reason.

It destroyed our family. At the time, my father found out that he had inoperable cancer. That was on the Friday. [My brother] was killed on the Tuesday. It destroyed our family completely. I have a sister that I haven’t spoken to for years. . . . My mother couldn’t handle it. She’s in a home with dementia. She thinks [my brother] is still alive. . . . I have one sister I see, but the whole family split. . . .

It all started with this. This was all too much.

TI2 | ‘People need to be accountable’

I’m not a vindictive type of person, but I think people need to be accountable for their actions. His employer was never charged. What do you need to do to an employee before the system makes an employer accountable? If he is not made accountable (after a death) then when? He needs to know that it’s just not on. . . . It sends a terrible message to other employers.

He needed to know that he did was wrong. When employers take safety with a ‘she’ll be right attitude’ - it kills people. I think if you don’t make people accountable the lessons get harder. He will continue to ignore safety, because he basically gets away with it. When we do this we are just promoting irresponsibility.

TI3 | ‘Many employees are the meat in the sandwich’

The other employee working on the site that day under the boss’s instruction, I feel he had a great sense of guilt. It is just not right for him. He followed the boss’s instruction and he should not feel any guilt. He thought the boss knew what he was doing.

Many employees are the meat in the sandwich. They want to keep their job, they have commitments, and they’ve got to do what the boss says. Some owners put supervisors in charge, put pressure on them to perform and take short cuts on safety. It is just not right. If anything goes wrong they blame the employee. Many bosses do anything to avoid responsibility.

TI4 | ‘Part of the responsibility rests with the people working there’

I know so many cases where they put pressure on employees to drive that forklift (without a license), because ‘We’ve got to move these things, and Charlie’s not here today, so you’ve got to run that thing.’ If you want to keep your job, and jobs are tight now, people will do
things that they wouldn’t normally do. It shouldn’t have to be ‘and/or’. That’s how it’s become. . . .

I do honestly believe part of the responsibility rests with the people working there. Sadly many feel insecure and don’t stick up for themselves especially the young. I often wonder what the outcome with my brother would have been if he had said: ‘I want a helmet and safety vest’.

TI5 | ‘The employer has to know he’s done wrong.’

I wanted them to charge this employer with industrial manslaughter. I didn’t necessarily want him to go to jail. But I wanted him to be charged, because I wanted him to see that you just can’t do it. That’s why I couldn’t understand why [the OHS agency] didn’t charge him. . . .

Obviously, he didn’t want to kill my brother. I understand that. But you don’t blame [another employee] and push it off on them. That poor guy – it would be a terrible thing on his mind that what you did in the work place killed somebody. He ran to [my brother] who was still alive, though he wasn’t breathing for a bit, at the time. The boss was on his phone, I believe to his solicitor, while my brother was dying. Give me a break. . . .

The employer has to know he’s done wrong and that it is unacceptable. He was actively involved and in control of the work site that day.

TI6 | ‘I’d want him to say, ‘Look, I’m really sorry.’

One thing we want to find out is whether, if people were given an opportunity to meet with the person responsible, they would want to do that. And that would only happen if that person was actually willing to take responsibility. You wouldn’t have a meeting if they were going to come and say ‘it wasn’t me’. That would be. . .

That would just inflame the situation. . . .

So if you had that chance, what would you want [the employer] to say to you?

I don’t think he’d tell me [the truth]. If he’d lie in his statement, I don’t think he’d tell me.

In an ideal situation?

I’d want him to say, ‘Look, I’m really sorry. I never meant to hurt your brother. I’ve done the wrong thing. I realise I’ve done the wrong thing. I’ll do whatever I can to protect anybody that works for or with me again.’

I want him to say: ‘I get it: I get what I’ve done. I’m really sorry. I can’t bring your brother back. But I’ll do everything I can to make sure that it never happens again.’ That’s what I want to hear. And then he’s got it, you know – he’s got it. If you don’t hear them say ‘I’m sorry’, and they’re trying to deflect the responsibility: ‘Oh, there was a helmet and he didn’t put it on’ - you know, that just gets me mad, because I know that’s a lie. That just makes me think he doesn’t get it, and he’s still trying not to accept responsibility. I need to know he’s got it - he’s sorry - he can’t change what’s happened – but he gets it. He’ll do whatever he
can to make sure that nothing like that ever happens around him again. That’s what I need to know.

**What would that mean to you to hear that?**

A lot. Because then I feel like my brother’s life wasn’t in vain. That we’ve done something to make these people realise that you can’t not do the right thing, because it affects a lot of people around you; and it can’t be changed once it’s done. If he can understand that it creates waves that go on forever. I’m always going to have a brother that died at work.

I just started a new job recently. I was scared to tell them that I had a brother that died at work, because they think that you’re someone who doesn’t care about safety . . . .

**So if you had the opportunity to have a restorative justice meeting, who would you want to be there?**

I would like to meet the [OHS agency’s] legal counsel responsible for prosecution, particularly [the person who gave the decision not to prosecute on my brother’s death].

If the families are to meet with the employers it would probably be best not to do it too early. Wait till the real pain has gone, a little. Maybe 6 months or something like that - or a few months anyway. The immediate pain has to subside a bit.

And then we get to the worrying about: what are you doing to fix it, the safety of others working now, and whether the immediate and long term danger been addressed. That’s the bottom line.

**What would you want to tell him?**

I’d say to him - I just want him to take responsibility: ‘Just take responsibility.’

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**TI7 | ‘They are all so scared of saying sorry’**

They are all so scared of saying sorry I believe because of the legal implications. Because they’re scared you’re going to sue them, because if you say sorry then you’re admitting guilt . . . . That’s the sad part about it. Nobody goes out to work to kill someone . . . . They don’t do it on purpose. It’s a sequence of events that, if it’s not stopped, turns tragic. It can be months and months of smaller incidents until someone is seriously injured or killed . . . .

It’s a shame that, if an employer says ‘I’m sorry’, they nail them. The legal system does not promote honesty. It’s not justice . . . .

**TI8 | ‘I just wanted them to tell me why they did not charge him.’**

There was so much evidence for him to be charged, that I couldn’t believe they didn’t. I just wanted him to know that he did wrong. That’s why I pushed for an inquest. He can’t continue to do wrong. You’ve got to pull it up and say ‘enough’. . . .

[The legal department of the OHS agency] made my life so difficult. Every time I tried to get information, they would put blocks in my way - they would make it difficult . . . . I just
wanted them to tell me why they did not charge him. I thought that was a simple reasonable question.

I even took it to VCAT. I got a hearing. On the day, they had two barristers. But there was just my husband, my eldest sister and myself. I didn't think you were supposed to have solicitors at VCAT. I thought it was just a ‘people’s court’. One of the barristers blocked my way, going into the hearing. I said: ‘Get out of my way.’ And he said: ‘We can talk this out. What do you want?’ I said: ‘I've told you all along: I want to know ‘Why did [the OHS agency] not charge my brother’s employer’?

When the legal barrister for [the OHS agency] appeared at the hearing he did not have the documentation he was supposed to have. I came with everything I needed. He had nothing. Then we had another mediation meeting. I had to sign saying that it was a closed court and that I would not take the matter further. He basically read out the same crap they had came up with every other time: Not in the public interest and legal privilege. They did not prosecute because of insufficient admissible evidence. We didn’t find out why. I’m still struggling with that. If the laws that protect workers are flawed then they need to be fixed immediately.

I don’t know what happened, but something happened and the legal counsel gave the employer an ‘out’. I’m sure of it. I don’t know why. Even [the OHS] investigators at the time recommended prosecution. But they let him walk. They didn’t even give him a fine. You get more for jay-walking than killing an employee through not following critical safety procedures. Such a waste.

[The OHS agency’s legal counsel] sent me all this stuff about my brother by courier at Christmas. I thought that was mean, sending me the video of them putting him in the ambulance, the autopsy report. That was just mean. How cruel. They knew exactly what I wanted, but gave me everything except what I wanted.

Lucky I’m not one of those people who go up the Westgate bridge and jump off . . . People lose it for a reason . . . . If I was one of these people that had a gun, and was that way inclined, I’d go down to the [OHS agency] and shoot the hell out of them. But I’m not like that. I. But it could make you ‘click’ – you could just lose it . . . .

You’re just so upset about what’s happened. But they keep throwing fuel on the fire, instead of trying to help you. They just make it worse and worse. And you go: ‘What the? These guys aren’t trying to fix it. They’re just trying to fix me. Basically, they’re trying to shut me up. But I’m not the kind of person who shuts up easily. We got into a big paper war. Because I thought, ‘You’re not getting away with it. You’re just not.’ I know I drove them insane. But I just needed to know . . .

I’m lucky that I’ve got a happy marriage and a strong family. I think if I didn’t have that I’d be a wreck. It’s pulled me through it. I’m a different person now. I’m far more cynical and far colder. If I think someone is not telling me the truth, I’ll pursue it to the end. And I’ve never been like that. This has started me off on the whole journey of: ‘I want the truth and don’t bullshit me’ . . . .
I got sick for a little while after this, because I just couldn’t deal with it. But I got over the immediate pain. I am still really bitter about [the OHS agency’s] legal counsel . . . . I believe in karma.

TI10 | ‘They torment the minds of the family’

Then the insurance company came up with this sort of crap: ‘Oh, he had an unhappy marriage. We think he suicided.’ Bullshit! He was running away, and it hit him in the back of the head!

That’s not uncommon. I’ve spoken to other people who’ve lost family in workplace death, and that’s quite normal for them to use this [approach] . . . . This is the sort of thing they do that torments the minds of the family. They screw with you. They screw with you big time. That’s not on. Like blaming [my brother]: ‘He could have been drunk. He might have been drugged. He could have suicided.’ Come on. Get out of here. Nah - not on. He found out my father was dying. And, ‘Oh, he had an unhappy marriage: he could have suicided.’ Yeah, he ran into the [thing that killed him] flipping over, backwards. Come on. It’s just ridiculous . . .

TI11 | ‘They were deliberately mean to me.’

Suppose, in an ideal world, the investigators were to come to you and say, ‘Look we realise we’ve really stuffed you around, and we want to apologise for that’ – is that something that would help?

Yes. They hurt probably more than the boss did, because the boss didn’t mean to kill my brother. They were deliberately mean to me.

I wrote to them and said that they had contributed so much to the sadness of what happened. It’s a pity that they didn’t work with me.

Who would you want to meet?

I would definitely want to meet the legal counsel of [the OHS agency]: someone who can make some decision on the prosecution or not of employers - not someone just to fob me off or some counsellor. I hate people who waste my time. So if we’re going to fix the system then we must do it seriously. If there is someone there who can make decisions on prosecution, I’ll definitely talk to them . . . .

If we can save someone, that’s not in vain. Changing the system has to happen.

TI12 | ‘The bottom line for me is: Will it happen again?’

My idea is: Ok, there’s a safety issue there, which has killed or maimed. There is a legal issue that has denied justice. Let’s fix it NOW. Block the loophole, so that there’s no ‘out’. That’s what I need to know has been done . . . I know that I cannot bring my brother back. But I just want it to be fixed, so it’s just not going to be a problem for someone else, and someone else after that. Protecting workers must be a priority.

The bottom line for me is: Will it happen again?
TI13 | ‘So they can’t say they didn’t know’

I know many cases where workers have said [to their employers]: ‘You’re not doing the right safety things’. They’re weeded out of employment or life is made very difficult for them. My girlfriend was working in a factory, and they weren’t following the safety rules. She told them. Well, they made her life hell until she left. I know that happened to my niece [as well]. It happens all the time. People should be saying: ‘Oh, gee – thank you very much. I didn’t realise. I’ll do what I can to make it right.’

You know what I think: Before you get able to run a factory or start a business in whatever field the employer should be made to do a safety course for that industry. It should be part of the requirement for the business licence. All employees and supervisors should be given required safety training outside of the workplace: a short inexpensive course on basic safety for that industry. There should be no excuses for not knowing the safety requirements.

Currently they give them a really thick book. They’re not going to read that unless they’re in trouble. You can see the book’s never been opened. So they need to do basic safety rules for the industry that they’re intending to work in. That way from the beginning, they know straight up what’s involved. Then these sorts of cases I think would be minimized.

Not make it too difficult for them, not a whole lot of paperwork – just basic things: ‘If you do this, it would be safer. This is the way it’s done.’ Not tiny little itty bitty things that don’t make any difference: serious stuff. Talk to the workers in the industry. If they are not doing or using some safety equipment or procedures ask them: ‘Why?’ Perhaps they have a good reason.

If they learn that, before they can run a business in that field they need to know the safety requirements, I think it would save a lot of lives. Once they’re running it, they’re too flat out to do all these courses. They’re unlikely to do them. So they’re going to cut corners. In the end someone gets hurt.

If it started at the beginning, I think we’d have it right. And the people who work for them, they’d need to do it too. Just keep the ball rolling, so that everybody’s informed. So they can’t say they didn’t know. . . . Before [employees] start working in that field they need to know all the basic things they have to have. Give them the knowledge to keep them safe. The industry has got to supply them with a list: ‘You need a helmet, you need a vest, you need this, you need this.’ If you’re going to ride a forklift, you need a license. Because some people don’t even know you need one. They just think that if the boss is telling them to do it and the equipment’s just there, they should get on with it . . . .

TI14 | ‘We’re trying to help you, so you don’t have this on your conscience.’

I think [the OHS investigators] should go to work-places as just a call-in thing, not because they’ve had a complaint. They should be going to these worksites, just randomly. Maybe pick the ones that are the worst of those, because they know the ones that are cowboys. Just go there and say: ‘Look, we’re just doing a safety audit in the area. Do you realise that you need to have these helmets or whatever is required?’

Don’t come in as the big guy, and say ‘We’re acting on a complaint.’ Because that just gets everybody’s back up. Just say: ‘We’re doing an audit on this type of industry, and we can see that you need helmets, you need safety vests. Do you realise you’ve got to have this - you’ve got to have forklift drivers with a licence’. 
Be nice, warm and friendly and say: ‘We’re doing this because we’ve had this many deaths this year with forklifts or other things. And we’ve had this many deaths where employers have said to us we didn’t know and we’re trying to help you, so you don’t have this on your conscience.’.

Safety has to be pushed on some people, but they also have to know why. Don’t just push it on them and say, ‘This is the way it is. We’ll come down on you. We’re the union. We’re the [investigators]’. That just gets everyone’s back up. It makes things go underground. If they say: ‘We’re here to help you. We want to make this as safe as we possibly can, because then your insurance premiums will go down –because you have minimised incidents’. It’s to do with the bottom line, which it has to be for bosses. Show them even some statements from people that have been bosses that have lost people in their industry, what’s happened to them. . . . They need to know that they don’t get off scot free. There’s going to be consequences.

**TI15 | ‘Get the baddies in the industry’**

The boss [is] only one little cog. . . . [The OHS agency] needs to go out to the main offenders – they know who they are – and nail them.

Do it nice and friendly, warm and fuzzy to start with. Then if they don’t do the right thing, start making it clear. Insist on seeing their insurance for their workers . . . . Even in their taxation documents, [check] to see they bought so many helmets, they’ve bought whatever is required for that industry. Say: ‘We will not give you [insurance] any longer, for these people, because they are at such risk. We will notify all the people in your workplace that your work practices are so dangerous that there is a high likelihood there will be a serious injury or fatality. We will place a sign at your workplace stating that the area is a dangerous workplace and notify your staff that they are at risk and will not be covered under [OHS insurance]. If necessary shut the work site down immediately.

We need more people going out there, not just on work-place deaths – because it’s too late then. We need them out there saying to the bosses: ‘This is a high risk practice. To minimise the risk, you need to do take these steps or supply this safety equipment’. Then your employees will be far less at risk. It will save you a lot of money. . . . It’s got to be the bottom line here. If you can’t afford a helmet or vest or something, we’ll supply one for your workers or yourselves, at minimal cost. You can pay it off on your [insurance payments].’ Make it easy to be safe. Don’t make it hard.

Get the baddies in the industry. If they won’t do the right thing, nail them. Whilst they’re taking shortcuts doing it that way and not providing the gear and stuff, they’re doing it on the cheap. The others have to compete. While they get away with it, the rest have to follow if they want to keep in the industry. . . .

Lock up the factory if you have to: it’s a disaster zone. This guy is seriously going to kill someone. When the baddies start getting fines and the heat’s on them, the rest pull their socks up – because they don’t want that. They don’t want to be closed down for the day and have to pay their workers, because that’s money. That’s money they don’t want to lose. So let’s get the safety gear, so that we don’t have to do that. That’s what I believe [the OHS agency] needs to do. . . .
TI16 | ‘Block it from the legal side’

Get the insurance company to say, ‘Have you had your safety audit? Otherwise your insurance is a lot dearer.’ That way, if they’re going to save a buck, they’re going to look at what’s in it for them – that’s how business is – that would help a lot. . . .

And the boss – well, the trouble is that if you say you won’t give him [insurance] then he’ll just shove everything in his wife’s name and continue won’t he. That’s the thing. You’ve got to block it from the legal side, so they can’t hide from their responsibilities . . . . I reckon if you go bankrupt after a death or serious injury to avoid responsibility then send the directors responsible to jail. I don’t care who they are. We have got to make them take responsibility . . . . The legal system has got to be fixed, so they can’t [find] loopholes and walk away . . . . Civilised society would not accept putting workers at risk.

We need to focus on Fair Trade awards for the safety and health of the workers and their families. Each year have awards for the best safety and health of workers in each industry and offer free advertising for these businesses.

TI17 | ‘Make it real’

Even have meetings with the staff of each business, with [the OHS agency], going to the staff and saying: ‘My brother died as a result of this industry because he didn’t do this, this and this. I want none of you to have that happen to you. This is what you do to keep yourself safe.’

Make it real. . . . Say: ‘16 people died alone this year on forklift accidents’, or whatever the stats are. Make it real. This is why they happened. This is why you’ve got to have your licence. This is why you’ve got to do it right. This is not a game. This is where people get killed. We’re just trying to make it as safe as possible, so you can go home to your families. . . .

Even go and show them photos of people: ‘This is a person that died on a forklift’. It makes it real, because it’s not just ‘more boring paperwork crap’. This is for real. I reckon that’s how you win them over. . . . They have to be their own safety officers everyday and be responsible for the safety of others.

TI18 | ‘The boss needs to be sitting at that table’

If [the employer] had to have a sit-down face-to-face with the family, he would know how much it hurt. [He] would take it on that he really did wrong. . . . The boss needs to be sitting at that table, whoever he is, and front on with the family.

I’ve spoken to a lot of people that have lost family with the support group. A lot of times the boss [thinks]: ‘The workers are just collateral damage’. . . . It’s not collateral damage. . . .

It’s a person. It’s not nothing. . . .

In some places, there are a lot of people from overseas who own the business. They hide from the damage that’s done, and cushion themselves. They need to know that it’s just not on. Safety’s got to be put right up there. . . . Things can be done to protect workers, as much as possible. They must not be able to fly off . . . and not see the damage that’s happened. I think they need to. Unless they get it themselves, they’re never going to do anything to protect the workers.
2. Companies

TJ1 | ‘Multiple people suffered’

How do I feel about the death? I can’t put my feelings next to what the wife and children of the person who died have gone through. I didn’t suffer the loss of a loved one. We did experience a massive financial impact. It came close to closing us down. And multiple people suffered as a consequence. If this program is about well-being, then it should be for all parties: for employees who, for example, actually saw the guy die.

TJ2 | ‘It did personal damage to my employee’

One of my employees went out to see the family, two weeks after the incident. He has a soft, genuine character. But the union had spoken to the family before he arrived. So it was highly charged; and it wasn’t nice.

It did personal damage to my employee. He came back in tears. He was very shaken. Emotionally, he was a wreck for quite a while. Even though what happened was not his fault, he still feels what he feels.

TJ3 | ‘How could we say ‘sorry’ if we don’t know who was at fault?’

If we were to meet with the family now, how could we say ‘sorry’? We don’t yet know who was at fault. It is one and a half years later, but the court case still hasn’t started.

We could say ‘sorry for the loss’ - but we have already done that at the funeral. It would have to be after the court case. But this would be 2-3 years after the fact. I cannot see how it could help. It would be too late by that stage.

TJ4 | ‘It could break them.’

If you’re asking an employer or employee to meet with the family after three years, after the court case, it would just bring it all up for them again. It could break them.

I would do anything I could to help the family, but not at the risk of damaging people along the way. The other parties may not have suffered the loss of a loved one, but they are still affected by what happened. If an employee is already feeling vulnerable and grieving themselves, they could be even more emotionally damaged by what is said to them at a meeting. I have seen instances where the employees have been in such an emotional state that I got the feeling they might do themselves harm.
TJ5 | ‘If the family absolutely wanted to meet me, I would go’

The driving force for this kind of meeting should be the family. So if I was told that the family absolutely wanted to meet me, I would go. I would try to accommodate what they wanted. But I would only agree to take part because I know what I can deal with. I have a strong character. I know that I can distinguish between what is reasonable and what is not. So when I hear something that’s unreasonable, or someone reacting emotionally in the moment, I can let it go.

But I would not place the well-being of my employees at risk. If they went to a meeting and were screamed at and abused by the family that could just reinforce their own feelings of guilt and self-blame – which they might have even if they were not personally responsible for what happened. After the meeting, they might think: ‘Maybe it was my fault.’

TJ6 | ‘I don’t believe you can control every variable’

There is a danger that the family of the deceased would read too much into what you said. Even your facial expressions might be taken in the wrong way. There is a condition, a nervous twitch, which looks like a grin. But it is only a sign that the person is scared and nervous. What would happen if someone who had that condition met with the family?

Could the family perhaps be prepared so that they know about this condition in advance, and so don’t misinterpret it?

Maybe, but that’s just one thing. There are so many other variables that may escape the notice of the facilitator. Could the meeting be so completely controlled and sanitized, that every word and every expression is understood in the right way? I just don’t believe that it can. I don’t believe you can control every variable. And that means that the risk is just too high.

Put it this way: if, after three years, a professional counsellor has not been able to help the family, then how could you expect an employer or a worker – who has no training or qualifications in how to deal with a grieving person – to give the right answers or say the right thing? They can be as well-meaning as you like, but still say the wrong thing.

TJ7 | ‘The potential dangers outweigh the benefits’

Could it be that the meeting you mentioned was just badly mismanaged? Your employee wasn’t properly assessed or prepared. It was too soon after the fatality. The family had been ‘worked on’ by the union. And so on.

That’s a good point. Maybe it was mismanaged. But I still don’t think that you can control whether the family will or will not hurl abuse. So many things can go wrong. Yes, you can prepare people, but you can’t control what they say in the meeting.

I’m not saying that there are no positives – but only if it all goes to plan. I just think that the potential dangers outweigh the benefits. Who is going to stand up and take responsibility for the damage that might be done to the parties involved?
If the company has done something wrong, then they should pay the penalty imposed by the court. If I got my ‘revenge’ (if that’s the right word) through the courts, I would want to move on with my life. I would want to try not to be bitter.

One thing you often hear in the news is how, when a tough penalty is handed down, families are still angry because, as they put it: ‘He showed no remorse’. The punishment doesn’t seem to be enough, because the individual still doesn’t ‘get it’.

But who judges that there is no remorse? I might show no outward signs of remorse, but that doesn’t mean that I am not suffering inside. For example, I went to a funeral of a close relative recently. I didn’t cry because I am just not the sort of person who cries. But that doesn’t mean I’m not affected. That’s just my way of dealing with it.

Perhaps this depends, to some extent, on your personality. I come from a private family. We don’t put our emotions on display. We deal with things like this privately. So it might work for some people, but this is the way I am. I would not want it if I was a family member of the deceased.

Some families have said that they still don’t know what happened, even after the court case. The investigation or the coronial inquest, they feel, did not really get to the bottom of it. Three or more years after the death, they are still left with questions about what happened. And they feel that only those directly involved can give them the answers. Would that be a good reason to hold a meeting, to get some answers?

But it could be that no one knows who or what was to blame. The investigators and the coroner may not have been able to discover what happened. The CEO of the company is unlikely to have been on site where the fatality occurred. So he won’t know any more than what the courts have found. It could have been just a series of coincidences that all came together and led to a tragic accident. There may not be enough evidence to disentangle precisely who contributed, or to what extent. There may be too many variables.

So what happens if you get this sort of case, where the courts have not apportioned blame? If the family are convinced that there is someone to blame, and that the company is just hiding behind the ‘corporate veil’, what would a meeting achieve? Would the employer be expected to say whatever the family wants to hear? Would they have to ‘take responsibility’ even if they don’t believe they were at fault? If the employer honestly doesn’t know what happened, what ‘facts’ could he tell them? Would he just have to make it up? How could that help a family who wants to ‘get to the bottom of it’?

My view is that if blame is to be attributed, then it should be done by the courts – not by the families or by well-meaning company directors.
TJ10 | ‘You would need experts to assess people properly’

Maybe it would only work, then, in those cases where the employer is found by the courts to have been at fault, or when they do know what really happened?

But even here, you would need to take into account the well-being of those employees who were involved. I come back to my previous point about risk. Who will decide who is strong enough to front up to a grieving family and say: ‘I am partly to blame for your son’s death’? What sort of training are facilitators expected to have for this kind of work?

I wouldn’t allow any of my employees to take part unless a professional psychologist assessed them as being able to cope. You would need experts in the field to assess people properly. At this level, they would need to be professionals in the mental health field.

TJ11 | ‘Just be aware.’

This may be an honourable, noble idea; and there may be some people who might want it. But I think you are putting lives and people’s health at risk because you are not able to control what happens in that meeting. That’s why I do not agree with it.

I have seen the detriment that it had on my employee. I have seen the impact it had on him and on his young family. I can only go by what I have seen. Had that experience been different, then this interview may have been very different. So I’m not necessarily saying that I am right. It may work for some people. But I saw how dangerous it was for him, to have gone through that experience.

All I am saying is: Just be aware.
‘I don’t have any trouble remembering the day’

The death affected a whole group of people in the company: the workers, the supervisor . . . The worker with him at the time was his mate, so he felt pretty traumatised by the whole thing . . . So we had a number of counselling sessions for all of those people. . . .

I don’t have any trouble remembering the day, I say to all of our people: ‘If you’re involved in a serious workplace accident, it impacts you.’ The management group who were involved in dealing with the incident, I tell you, every one of them can tell you when it happened. They’ve got really strong recall of all of the events. We have a lot of safety meetings here, and I recount the story every time, because I say ‘you don’t want to go there’ . . .

I’ve got a pretty big file on this case. I couldn’t tell you what my three kids’ birthdays are, but I can remember this. [The person] in the next office, who is our safety manager, he can tell you when it happened. They are not things you want to happen every day, I can tell you. Or ever.

‘It all went very pear-shaped.’

The police attended [the fatality]. They told us they would deal with notifying the family . . . The wife of the deceased was working. The police went to the house. They couldn’t raise anyone. So they left a note at the house for someone to ring the police. We were quite adamant that we wanted to go down and make contact. They said: ‘No. Don’t do it. This is our job.’

The father . . . heard that a worker had been killed . . . He knew that his son was working down there. So his reaction was to ring [his son], but he couldn’t get on to him because his mobile rang out. Then he tried to ring his [son’s] supervisor, but had difficulty in getting him. . . . The [family] were finally notified. But it was, I think, the father who contacted the office. So it all went very pear-shaped in terms of the management post-accident.

‘We had screaming matches.’

I must say the deceased’s wife was very, very, very angry with [this company]. Blamed us for the incident. We sought to have a number of meetings. Our Victorian manager went down with a counsellor to see if we could assist. He just got told where to go.

That just continued on. There was no respite from the family, although the father was reasonably conciliatory. But his wife and her brother: They came in and we had screaming matches in the office. It was very unpleasant. . . .

Initially when you wanted to talk to the family, can I ask why you wanted to do that?

Just that he was part of the [our company’s] family. I knew the fellow personally. Our Victorian Manager said: ‘No, it’s my responsibility. I’ll go down and see the family. I’ll take the counsellor and make the counsellor available to the family as well if they want to use her.’ But he met a real block at the door, from the family.
I think that was partly because of the delayed notification as well, the way it was communicated. The management of the incident by the police left a bit to be desired. They could have made greater steps to track down the wife, and the rest of the family. So there was quite a lengthy delay in the event and the notification. I think that contributed to their angst. But, then we sought to have some conciliatory meetings in our office to say: ‘What can we do’. They came in and the whole thing just imploded.

**Do you know why that happened?**

[His wife] blamed [the company] for his death, and there was no wish to reconcile all of that.

...  

**Does it still feel unresolved about what happened with the family?**

I don’t think about it, to be quite honest, anymore. But if I am reminded, I’m angry about it. I just don’t think we got a fair go in terms of: ‘Hey, it’s happened. We’ll do whatever we can to make your life better along the way, and give you whatever support we can.’ But we weren’t really given that opportunity.

**What do you think they were wanting?**

I don’t know. I would have thought, after a few days, that sort of anger would subside. But it didn’t. We got rejected so many times by the family that we said: ‘Whatever we do is just creating additional angst for everyone.’ So we were very much cut off from the family.

I think [we] did as much as we possibly could. We paid for the funeral. We paid for the wake afterwards. And the company closed down for the day. But we got no recognition from the family about that. Like, there was a pretty strong message through the group.

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**TK4 | ‘We can take some small steps together.’**

There have been four workplace incidents in [our company in the other country]. I dare say that the families [in those cases] and our company are probably good friends. [The company] would have done a lot to assist the families. They would have been in regular contact with those people. Now it’s a smaller country and much more population in the regional areas, so everyone is a bit closer. But there was an expectation in the company that that’s what we would do here. But every time there was a meeting, there was more anger. So it just precipitated the situation.

**So those meetings, if they were to take place, would have to be far better prepared and managed?**

Well, I think there needs to be someone who says to the family: ‘These people want to deal with it. We think it would be important for you to deal with it. Let’s get together and we can take some small steps together.’ You can never undo what’s been done. But certainly that would have been our strong desire to have done that.
This has dragged on for six years

There was subsequently a prosecution. We pleaded guilty. The judge found causation against [this company] and we’ve appealed that. . . . The judge has reviewed the case and said there are sufficient grounds for the appeal. So we’re waiting for that to go forward. This is now six years.

There is very strong criticism from this company about the process in dragging this on for so long. It was about five years to the original hearing and prosecution. That directly affected the guy who was on site and the supervisor who was implicated . . . I think this lengthy duration has been an unreasonable burden on everyone who was involved. . . . I can’t believe that you can’t get these things on in 6 months.

Can you explain why it took so long?

I think it’s a two year period that the authority has to advise you, from the day of the incident, whether they are going to commence a prosecution. But they left it to the last day. They notified us, our lawyers, by email. They just haven’t got their stuff together.

Why, in a case like this, you can’t get all the evidence in weeks, you know. We’d given all of our statements, all of our records, all of our training records, the whole box and dice. It’s almost like a game for them, to delay the process. Then, of course, once they’ve given notice of the prosecution, then you’re in the hands of the courts. I guess that’s more difficult to control. We didn’t know – we suspected we were going to get prosecution, but we lived in the hope that we may not. And it got up until the last day when the [OHS] authority could lodge their prosecution under the Act. I just think that was an unnecessary game. They could have told us on day two: ‘You’re going to be prosecuted’. It just shouldn’t take that long. . . .

It can’t be that difficult to get a legal person to sit there with the parties and determine why it happened, who contributed, and what’s a reasonable penalty. You could use the arbitration process. Get one of those retired judges or someone who knows the system and sit down and say: ‘Yep, this is what we think happened. That’s what they say happened. We’re in agreement. Who’s fault was it. Slap on the wrist. We’ll fine you a hundred thousand dollars. Give a hundred thousand there. Give the family a hundred thousand. Let’s get on with it.’ We’ve saved half a million dollars, and it’s dealt with. The legal process is unbelievable.

What was the impact of it taking that long?

It just left the matter open for everyone - not only the family, but the company and the employees. . . . I don’t know the answer, but the answer is not to have a prolonged period before people get closure on this sort of stuff.

You need to take some personal responsibility as well

I must say, our feeling is that we’ve been hard done by the courts. That’s why we’re appealing the judgement. To do this [kind of task] you need to be trained, and the employee had been. There’s a 6 month refresher course [for this kind of task]. He had done it 4 times. You know that you never [do this kind of task without all the right safety equipment]. And all the right equipment was there. But we didn’t have a supervisor on site to say: [‘Don’t do that task without the safety equipment’]. Now this guy was a leading hand. He had worked for us
for [several] years. This wasn’t his first time on the job. Our view is that you need to take some personal responsibility as well, for ‘crossing the road’. That didn’t happen.

Were the family just not able to hear that perspective?

No, they just didn’t want to know. ‘You f-ing killed my f-ing husband, you f-ing - and it got worse.

How did that make you, and everyone feel?

Pretty bad. . . .

TK7 |  The appeal is about ‘closure for the blokes involved’

The supervisor was apportioned blame in the court. I would say he has still not got closure on that matter. When this was going to court, he would ring me up two or three times a night: ‘Been on the booze’, you know. He just wanted to make it go away. I reckon it’s made a big impact on his life - still - six years later. He’s still with us, and that may or may not be good for him. He might be better away from it. But, you know, that’s his career.

Do you have a sense of what he would need to move on?

No. Well, I think if we are able to successfully appeal the judge’s finding of causation that would help. I guess that’s one of the reasons why we’re doing this. We’ve got a finding against us. We’ve had the publicity. We’ve dealt with all of that. Now we’re going back for another crack, and we’re spending money. There’s nothing in it for us really. It’s on the record that we’ve had a workplace fatality. It doesn’t change anything in terms of our pre-qualifications and our eligibility to do things. There are companies that don’t want to work with people who have got ‘unsafe workplaces’. So a bit about it for us is closure for the blokes involved. So we’re going to have another crack.

Was the potential impact on the family taken into account in considering whether or not to appeal?

Well, look, they clearly blame us. I would be the first - and I’m sure our Victorian Manager and the other people involved - if we thought we had done something wrong, we would put our hands up. Every day you bugger something up, you do it wrong, you don’t do the right process, you don’t have the right equipment, or you have a failure, or a system breakdown. But here, something [happened that didn’t involve any failure at that level]. Unless we had a supervisor on site to say ‘Don’t cross that road. Don’t [do that procedure].’ You know, how much control do you have? So, yeah, look – there’s no evidence taken, so there’s no requirement to attend the court or do anything. There will be three judges who will review the evidence. We’ll have our barrister go in there and presumably [the OHS regulator] will have their barrister in. So, yes, it might keep the thing open for the family as well.

But this is about doing what you feel is right for your employee?

Yeah, for the blokes who work for us. And I don’t know what the situation with the family is. Like, you never replace your son. You never replace your husband. But sometimes you’ve just got to move on as well.
‘If you find something wrong, it’s used against you.’

Our parent [company, which is based in another country] can’t believe this process in Australia. What would happen in [that country] if we had a serious workplace accident is that the company would conduct their own investigation. That might be alongside or with the equivalent [OHS] regulator. We would identify what went wrong and put in process, as a result of the investigation, a change. We would share our findings with the regulator.

But you don’t do that in Australia. You hide it. You get legal privilege on your investigation, because [otherwise] you hang yourself. If you find that something had gone wrong, then it’s used against you. There’s no spirit of cooperation between the company and the investigation and the police (if they’re involved). So it just seems a stupid system, really. If you’re wrong, hey, you’re wrong. Let’s fix it, take your medicine if there’s medicine to be taken. But this system is just –

‘They are bloody horrific fines.’

The legal costs associated with all this are horrific. Relative to the fine that was imposed . . . let me tell you the legal fees were three or four times that. The amount of time invested. I spent hundreds of hours, probably, involved in this matter, as others did.

So just the whole system doesn’t work. . . . You plaster over everything you can, you know, that veneer between you and the regulator, because they are bloody horrific fines - quite unreasonable, in my view. Although, you know, what’s a life worth?

But the fines under the Act are – particularly now – a million dollars. What does it all prove? No one sets out to have an unsafe workplace. Those who do, and who act recklessly, are not corporate-style companies. They are backyarders who don’t think about the consequences. The consequences for them are: they can’t afford to pay anyway, so it doesn’t matter.

‘They come out with the stick.’

So what should the response of the regulators be?

The problem is the corporation thinks they’re going to get whacked with a bit of four-by-two. So they put the barriers up, call the lawyers in and deal with the lawyers. But there really ought to be a fairly prompt investigation, incorporating all the parties. Because at the end of the day, what you want to establish is: what happened - why did it happen - how can we stop it from happening again. Because once it’s happened, you can’t go back.

So it’s not a great system. In fact it’s a shithouse system. It’s crap in every one of the states. We should have one system, not five. But I guess, in fairness, the government is trying to move a bit closer to a national system. But really, one system, one regulator, one standard set of rules and fines and penalties and one compensation body. Let’s make it the same. It is Australia. I think it’s Australia we live in, not Victoria!

Are the penalties effective?

No. What’s reasonable? I’m not sure. You know, there are accidents happening. The regulator used to be an educator. They are a policeman now; and there’s a lot of distrust from management about where they align themselves. So there’s less will to want to involve
them in your business. If you ring up and seek assistance, you can. But they come out with the stick. I don’t think that’s effective. . . .

The better penalty for us would have been: Give $250 000 to the Salvation Army, rather than, with due respect, feed the lawyers - because the lawyers were getting fed on both sides (the [OHS agency] engage a team you can’t jump over). It’s just a nonsense.

TK11 | ‘Standards have changed.’

The interesting thing for me is you’re judged today on standards of five years ago. That was a real issue in relation to our prosecution. I can go back – I’ve been with this group for [over 20] years. When I first started, the safety meeting that I went to, we had a discussion about whether we would provide safety footwear to employees - and that was deferred: ‘Oh we’ll go back and talk back to the management about that.’ But today you can’t walk into the place without getting all this protective gear, boots, PPE equipment. And it just shows, in 20 years, how standards have changed. That’s the reason why you need to deal with things concurrently. We were judged [using today’s standards] on circumstances from 5 or 6 years ago. And the industry has moved significantly towards better practice, better training, better understanding, better supervision – all of those things.

Why has it made that shift though? Was it because of the threat of . . . ?

I think there’s been some of that. . . . The unions have made a contribution. That’s a tick I’d be happy to concede. But what was done in the 1800s is different to the 1900s and the twentieth century and the twenty first. I think we’re just moving on as a society.

TK12 | ‘What’s a life worth?’

The penalty is usually rationalised in terms of deterrence, that people will only do the right thing if . . . ?

Well, I think corporations are pretty gun shy. . . . But I don’t think we are driven here by the fear of the penalty. We are driven here because we employ people, and they are like you and I. Anything that impacts on them, impacts on their families. It’s just what you do. I don’t think that the penalties are a deterrent to the way you do things. It’s education and training and just moving forward as a civilised society really. You go to Hong Kong, and they’re hanging off bamboo scaffolding. Well, that’s what we were doing here 40 years ago. But you move on. We are mindful of the penalties, but whatever the penalty was here it didn’t impact on the outcome. I guess if you do things recklessly, then is a penalty a deterrent? I guess it’s all relative isn’t it. The penalties are not a driver for us.

Would they be for some?

I don’t know. I think they make the regulator feel good: ‘If you don’t do this, then you could get this.’ The unions like using them as a sort of stick. But what’s a life worth? What’s an injury worth? Certainly I don’t think we do anything any differently as a result of the penalty regime.
When I’ve talked to some bereaved families, and asked them what would be justice for you, and a lot of them have said ‘to have the truth’.

The courts determined the truth for us because the court system said: ‘Oh, the court wouldn’t offer indemnity to our supervisors’. So the immediate response to that by their lawyers is: ‘You don’t have indemnity. If you give evidence here, you might implicate yourself in the finding. So don’t say anything.’ So how does that create an environment where you get the truth? There the threat of prosecution penalties actually negated the truth being on the table. . . . The court didn’t help at all.

We don’t know the truth, really, to this day. The supervisor has told us what he said he told the worker. There’s no corroborating that. But he gave that statement to [our criminal lawyer] on that day. So he didn’t have a week to go and create a story. He got on that day: what happened, what did you tell him, when did you call him, all that sort of information. So he didn’t think about whether he might have got prosecuted on that day, I imagine. But yeah, I think let’s establish exactly what the facts are, as best you can. I would be very happy to do that.

Sometimes families want to hear someone taking responsibility for what happened, even if it was never intentional, it was an accident, but there may nevertheless have been some role that they played that led to the incident. Sometimes that’s the CEO they want to talk to, for them to come personally to hear the impact that that’s had on the family, and to say sorry for their role in this. Is that a possibility?

Oh it wouldn’t be a problem for us. Our CEO happened to be overseas at the time, so our State Manager got the gig. But if we had another workplace fatality, our CEO would be involved. There would be no question about that. Our CEO gets notified the day anyone has a medical treatment here. . . . Our national safety manager is required to be notified by phone. An incident report is lodged and on the same day the CEO is to be advised as to why. So it’s got fairly high priority.

If this process was to take place - if people were to get together, when would that best happen, given the system we have at the moment in Victoria?

Well, it’s really hard to do that before any legal situation is on foot. That’s the problem. The penalties are there. If you’re up for a million dollars, are you going to want to contribute to the process? I don’t know. Our lawyers would be saying, ‘No’.

Would you go against the advice of your lawyers, if you did feel you were truly at fault?

You’d like to think what [that] your actions [in relation to RJ] shouldn’t contribute further to the penalty you’re likely to get. That’s the problem.
So it clearly can’t happen before the legal process is over.

Unless you could quarantine those discussions and say: ‘There’s privilege around this’. But I don’t know how you do that. Because there will then be people in those discussions calling you to give evidence. I don’t know, but I reckon that’s a real impost on getting the social bit sorted.

**TK16 | ‘We’d have been happy to have contributed.’**

One other option is to have it as part of the sentencing process. So if there’s a finding of guilt, a sentence could be created which might involve, for instance, giving money to the Salvation Army, or helping the family, or doing something constructive to make sure it doesn’t happen in the company.

Well, there is some of that already isn’t there. The company makes a statement and expresses regret or whatever, and the family send in impact statements as to what impact it’s had on them, and that impacts on the sentencing. So that’s already happening a bit I guess.

I know in environmental matters, the courts give orders and require companies to do things: make apologies, put an apology in the paper, and then go and do some restoration work somewhere else and those sorts of things. We’d have been happy to have contributed to something that we thought was worthwhile, particularly if we thought it would circumvent the journey. Because we’re spending money pretty quickly on our defence I can tell you. It just goes on forever.

**TK17 | ‘We’d be very happy to talk to them.’**

Suppose after the legal process, the family - through a third party, a facilitator – came to you and said: ‘It’s all finished now, but we’d still like to talk to you about what happened’. We’d be very happy to talk to them. I’m not sure that we’re the norm.

What would you hope to get from that?

I guess, as much as anything, we would like the other parties involved to understand that - we’re not in their shoes - but you understand. But that’s going to be really dependent on the will of the companies and the people involved and the process. I think we’re a bit unique in terms of other businesses of this size. We’re not here just to make money. We’re running all these internal programs . . . about how we deal with each other, our customers and our suppliers. The company is saying, you can’t fit in with these moral values, then maybe you should go and work somewhere else. But [this company] is a bit different to someone down the road I guess. . . .

Yeah, look I think our situation could have been better. But we tried, but you come up against a wall, and finally think: ‘Well, there’s nothing more I can do.’

Going back to that meeting with the family, how do you think that would benefit them? What would they get from it?
I think it might have helped them understand exactly what happened on the day, because they didn’t know anything about what happened on the day initially, other than that their husband and son were killed. But I guess it’s no different to one of your friends coming around and seeing you after such an event. You want someone to talk to.

Whether we’re the best person to do that? We tried to put the grief counsellor in, but the family might have perceived them to be taking our side. Maybe if they put someone independent in, then that might have been better. So I think you would need a professional to be the person in the middle, between the parties. It would be hard to do it without them. . .
‘It was devastating.’

Obviously, people were really saddened by what happened. . . . The fellow had a wife and young children. Tragic. I mean absolutely tragic. It was devastating. There’s no changing that.

‘We had a system but failed to use it, so ‘we were prosecuted’.

The Coroner found no cause of death. . . . And it wasn’t actually determined either that there was any fault in the [equipment] that caused [the incident that led to the fatality]. . . . We ended up being charged under the OH&S Act for failing to maintain safe systems at work, on the basis that we had developed a system but failed to use it in accordance with how we’d said we were going to use it.

The guys [in the business unit in our company] who employed [the contractors] to do the job had developed a system whereby they would approach contractors and say: ‘Right, we want you to be on our preferred contractors list. In order to do that you need to give us these bits of paperwork to prove to us that you have OH&S systems in place. Before you start any job, you need to do a job safety analysis. We’ll get that from you before you start work.’

What we failed to do was to get the job safety analysis before they started the work, according to our system. Part of our defence was that the system was brand new. It well and truly exceeded our requirements at law. But because we still failed to operate in accordance with our system, we were prosecuted. . . . We were found guilty by the jury, but we weren’t convicted. We were put under an undertaking, like a good behaviour bond with respect to safety systems. So that’s where we are today. . . .

‘No one feels directly or indirectly responsible’

I don’t think that there would have been anybody in the [company] environment that would have felt themselves to be either directly or indirectly responsible. Now I might be wrong. There might be somebody out there who thinks: ‘Maybe I could or should have done something.’ That’s not a conversation I’ve had with anybody. But neither am I sure that there would have been anything that anybody could have done - from my understanding, and certainly from the evidence gathered to defend our case itself.

One of the guys who worked very closely with them and in the days leading up to when they did this final job, testified that he used to see them checking their [equipment] every morning. It’s not our guys’ job to go and check a contractor’s [equipment]. I mean if there is something obvious . . . of course they’re going to say something. I think our people were well and truly across that. . . .

They had good working relationships. I would have no reason to think that, had they seen something awry that they wouldn’t have said anything. In fact they had at times . . . So they were in the habit of doing that. It was a matey group.
TL4 | ‘You wouldn’t allow yourself to feel responsible’

I don’t believe there was that mentality around the place of us feeling responsible. But it’s interesting because . . . when you’re trying vigorously to defend the case, you wouldn’t allow yourself to feel responsible. This is probably what you’re dealing with too. It’s probably exactly it.

So even if somebody might have [felt responsible], they may not have been given the opportunity to [say anything]. I can’t comment on that directly, because I simply don’t know. Maybe it is a possibility. It’s very interesting.

But even if you take the self-protection and the organisation protection elements out of it, there wasn’t that direct link with the death. It’s not making excuses. It just wasn’t particularly direct. It would have been different if our guys had been working on site and something had happened.

TL5 | ‘Fear of further legal retribution’

Having a death associated with your workplace has not only changed the way we do things, but it’s actually changed the way people think about safety. I think the impact has been greatest on the business unit that had actually employed the guys to do the job, which is interesting – this comes back to our organisational culture and structure and things like that.

I think there is still that quite defensive attitude from others around the organisation: ‘Oh this happened. [The OHS agency] went to town on us. We’ve had to pull these other ridiculous systems and things into place. The cause of death wasn’t even known anyway.’ So it’s very arm’s length from it.

So can I just tease out the motivation for this change? Has it, in your view, been mostly the fear of . . .

Fear of further legal retribution? Yep. I would say 90%.

Rather than?

Rather than feeling any link with the death. So you could argue for all the wrong reasons. At one level it is. This is our dilemma with [the OHS agency] themselves.

TL6 | ‘They were out to get us.’

I’ll never forget: there was a seminar that [the OHS agency] put on. I think they’d just employed a new CEO there or something like that. This must be 5 or 6 years ago now. They came out and said: ‘We’re doing less of the big stick thing. We’re here to help.’ Fantastic. I was pretty new to the whole safety industry at that stage. So I thought: ‘That makes sense. That sounds good. They’re here to actually help us get better results and have safer workplaces’.

I just saw the absolute antithesis of that in this case – absolutely, absolutely. They were out to get us. They were out to use us to set an example to the broader industry that: ‘This is what happens if you don’t do things properly.’ I think they chose a poor case to pick on,
because it was not clear-cut at all, because the cause of death was not determined. It would have been quite different if the [equipment had failed] and that had caused his death or something like that. But that wasn’t the case. So I don’t think they were really able to get their message across.

In saying that, the prosecution has been effective in opening our eyes, prompting us to commit greater resources and things like that.

**TL7 | ‘We’re far better off not even looking.’**

We’re now held up as a good example in the industry of the need to protect yourself against litigation. We were being noble, in a sense, in what we were trying to achieve with our OHS system, but because we didn’t get up to the mark, even though it was well and truly beyond what was required legally, we were prosecuted. We got punished for trying to do good things... I think there’s this bit of ‘Damned if you do, damned if you don’t’ attitude around the place.

*So is that the lesson people have taken?*

Yes, very much so, very much so. This is something I’m constantly still grappling with. There has been this swing in attitude that: ‘Well we’re just going to be setting ourselves up for a fall. Therefore we’re far better off not even looking. We don’t even want to look. Because if we look, and we don’t see something, we will be prosecuted.’ So this is just the absolute stupidity of the system. We have a lot of people that are thinking that way now. And I say, ‘Hang on though: At the end of the day, you want people to go home safe and alive. You just don’t want bad things to happen. Use your brain.’ But the [OHS agency] has actually turned that around on itself. We now have people who would rather not put themselves on the line, expose themselves, and would rather just turn a blind eye and say ‘We never saw it. We’ve fulfilled our legal requirements.’...

**TL8 | ‘We have these moral requirements as well.’**

It’s a spectrum. At one end you’ve got [the OHS agency] and their view of the world, and how you should be doing business. At the other end - I call it [the criminal law firm]’s view of the world - these are your basic legal requirements. Where we need to be is somewhere in the middle. Not only do we have basic legal requirements, but we have these moral requirements as well. We’re a public entity that has a duty towards the public, towards our staff, towards the people who are working for us. The [law firm] wouldn’t deny that. But when they argue their points, they are arguing at the legal end of the spectrum.

This is where some of our people heard those legal arguments and then said: ‘Why would we do that [i.e. any more than is legally required]?’ Well, because that’s not sufficient on its own. There is more to it. And of course [the law firm] would acknowledge that too, but that’s not what their argument is in the legal sense.

**TL9 | ‘The Rolls Royce version is not feasible.’**

When [the OHS agency] puts out a guideline or Code of Practice, what they are giving you is: ‘This is the Rolls Royce version of how we expect you to manage safety in relation to
contractors’, for argument’s sake. That’s fantastic - if you’ve got a bottomless pit of money and resources to throw at it.

[Given our working context and resources] it is not feasible for us to employ a ‘Rolls Royce’ version. Then it becomes a matter of: What is the real risk associated with this? This is the first workplace death in the recorded history of [this company]. So it is not what you call a ‘high risk factor’, in our area. So it’s not something that you’re going to put endless resources into. So certainly [the OHS agency] would have had us doing everything by their book, which was not feasible. And it still isn’t. For all the things that they would like us to be doing, we can’t necessarily go deliver at that level. . . .

TL10 | If it is not legally required, take it out of the procedures.

Our rationale behind any OH&S type work that has occurred since the incident has been: [1] ‘Ok, have we got a system of compliance here?’ (we’ve had a couple of audits); and [2] ‘Do we have things written in our policies and procedures that are beyond compliance that we’re not actually doing or that for whatever reason, that we’re not actually able to do in accordance with our procedures?’ Because that’s basically where we exposed ourselves to prosecution.

So, if you like, we did a due diligence around our procedures to make sure that where we said we were going to do something, we in fact were doing it. And if we weren’t doing it, asking the question: ‘Do we need to do it?’ If not, let’s take it out of the procedures to protect ourselves.

The question: ‘Do we need to do it?’ – was that a compliance question?

Yes, yes. Yep. Very much. Yes, the question was a compliance question if we weren’t doing it. It so happens that there are a number of things that we do that are beyond compliance, but we don’t necessarily have them enshrined in our procedures. That can be for varying reasons. Mostly because you might find that some people do those things well, and they’re a matter of course - They will occur because there is a greater risk in one area of the organisation than in another. . . . So because we have a centralised system that tries to be a one-size-fits-all, it’s safer to do it that way.

So I think the rationale behind that is that we still keep doing the good things that we’re doing, but we won’t necessarily enshrine that in policy such that, if somebody fails to do it, or if it’s something we don’t have the resources to check up on it to make sure that it’s being done, then we’re safe.

TL11 | ‘Nil injuries and deaths? That’s impossible. You’re setting us up.’

If it’s not enshrined, how will people know that . . . ?

That’s the expectation? Ok, we have an overarching policy position on our attitude towards health and safety.

What we have more recently, is a draft OH&S Strategy that I worked on with my team, and some of the other managers who have higher risk areas, or areas of particular risk. When it was put out to the broader group, there was so much fear around it, it wasn’t even funny. It was just: ‘If we say we’re going to do this, and we aren’t, then [we’ll be prosecuted].’
[The response was:] ‘That’s impossible. That’s not going to happen. How can you say that? You’re setting us up.’ And so on. Boy, it’s a strategy! This is what we’re aiming for. It doesn’t mean we’re actually going to get there. We’re aiming for the top. That’s our goal. We don’t want anyone to get hurt. I mean what are we saying? ‘We want five a year’. I don’t think so. We don’t want five a year. So very, very interesting, that shift in attitude.

In the end I’m going to have to seek legal advice on the implications of a strategy document, in order to be able to convince the staff that it’s ok: you’re not going to be exposed and get caught out. So, it’s fascinating. It’s still in draft. I’m going to have to do some more work into changing the attitude of fear around that. . . . Even though it doesn’t explicitly relate back to the death itself, in effect everything has come from that. There’s been a major shift in attitude and culture - some of it for good, but not for the right reasons. It’s something that I grapple with a lot.

TL12 | ‘At one level, I felt vindicated. At another, it’s ludicrous.’

If you employ contractors then the bottom line is you can’t contract out your responsibilities where you have control. . . . But you can’t be responsible for things over which you don’t have control, which sounds pretty fair and logical. So the learning for us out of that is: Only take control - or claim to have control - of those things over which you need to control or which you really do have control over. . . .

So in our contractor safety management system, anybody who does contract work for us has to go through an approval process. . . . It is a bit of a trust system. We have a comprehensive checklist where they sign on the bottom line where they say, ‘Yep, we’ve got all these safety processes in place, we do all these things, we know our obligations.’

Then we do random audits. So we’re not saying that we audit everybody in our procedures; because if we accidentally somehow miss one, we’re going to be potentially exposed. Where there is some joint control or we’re working jointly on the site, then we’ll go out there and audit. But if it’s a contractor working alone, we don’t do site audits. We don’t have the resources to do that. It would be unrealistic and impractical. We conduct random desktop audits after the job or during the job and just say: ‘Ok, you did a bunch of work for us yesterday. Show us your paperwork in relation to – whatever. But we don’t go and look at the site and critique: ‘You haven’t got signs out right’, or ‘You’ve got some fall-from-heights issues here’. We don’t do that.

Because you don’t have to?

Yep. That’s right. Because we don’t have to, that’s absolutely right. We’ve received legal advice saying: ‘Why do it? You don’t have to. Keep it at arm’s length.’ That’s right. At one level I actually want to do it. I actually think there would be benefit in doing it.

Why?

Because I think that we know that not all of our contractors work as they should.

How do you know that?
Because you hear people down the street talking, or whatever. You just know. You know, small towns and what have you. I’ve had other contractors ring me up and say: ‘Hey listen, these guys working down the road here, are not on the ball.’ So I’ll send someone out there.

[We recently had an independent safety auditor question us on this matter], but we said: ‘You show me where it says in the Act where it says we’ve got to do that. We have legal advice that we don’t need to do it, and it’s our preference not to do it . . . at this point in time.’ . . . Anyway, he couldn’t argue the point. He knew he was cornered. At one level, I felt vindicated. But at another level, I just thought: ‘It’s ludicrous’ . . .

**TL13 | ‘Things were heading in the right direction.’**

*If the [OHS agency] didn’t have the big stick, if they operated on the ‘gently but firmly’ principle, would it be a different situation? Would people be more willing to go the extra mile or would they go back even further because there is no deterrence?*

It’s really hard to say. I think we were maturing as an organisation anyway. We had started to commit more resources than we ever had to the area before anyway, prior to this happening. So in that respect I think that there were already things going on that were leading us in the right direction.

[The OHS agency] had a number of projects that they were doing . . . . Where they see areas of risk, they concentrate on them, and really come out and work with the [companies] to get things happening. I think that approach was working very well. We formed a good relationship with our local [OHS agency] representative, which we pretty much maintain to this day. I think things were heading in the right direction. Maybe not with the speed that occurred after the event, but I think it was happening for the right reasons.

*Which were?*

Which were to reduce incidents for common sense reasons. We want people to go home healthy. We want to have a safe working environment. We don’t want to have issues, for all the right reasons. Forget about complying with the law, it was because we want to have a safe workplace. We want to have a workplace where people want to come to work, feel safe, and go home. Pretty simple stuff.

**TL14  ‘We’re just feeling victimised now.’**

I think this has really turned it on its head. I think we’re still doing good things. Ultimately we’ll probably end up getting similar results, from the perspective of people going home safe - but with that sort of fear struck into you. Yeah, it’s more fear than anything else.

I personally am not fearful. I’m very disappointed in the way that the whole thing was treated and blown out of proportion. I just think: ‘Guys you could have used a much better example to get your message across.’ Now I think we’re just feeling victimised now, to be perfectly honest. We’re ultra-sensitive to it now. Is that a good or bad thing? I don’t know. . . .

I think there are some people have taken on the messages and have moved forward and are applying them in a host of different ways. There are others who are still bucking the system saying: ‘The whole thing was just stupidity.’ . . .
In one sense it is a real lesson about doing what you say you’re going to do. It’s a lesson in due diligence, in some ways. If that’s caused us to minimise some of our systems in some ways, that’s not ideal; but in other ways, from a strictly business point of view and a governance point of view, it has actually improved our business somewhat and certainly improved our risk position in relation to litigation.

TL15 | ‘You couldn’t let a lot of that creep in. I had a job to do.’

I haven’t gone back to the family. . . . We still don’t know whether the family might even come at us in a civil action. That’s still up in the air. It’s in the lap of the gods. I don’t know whether they’ve got a statute of limitations on that, whether they’ve got to do it within X amount of years or whatever. But that’s still a possibility. So of course there’s a bit of a barrier. As you said before, apologies, admissions or anything like that–

There was a court case in the local magistrate court. . . . My boss and I sat in court for the few days that that went on. I guess commiserated, or participated in that with them in that sense. Not particularly overtly, but we were there. There was a bit of a show of caring and concern. I mean we had our own interest in how that went and how it was dealt with. But there was also that level of ‘we’re in this together’. And it was more than just that legal sense. You know, we’re in this together.

*Did you talk to them?*

Yes, we did talk to them. Not extensively, but there was. Certainly, in my earlier investigations I spoke to various guys [he worked with] and got a real sense of their loss. I mean he wasn’t known to me at all. So I didn’t share that, except only through them.

I have to say I wore a completely different hat through all that. I was there very much to protect the organisation, so you couldn’t let a lot of that creep in. I had a job to do.

TL16 | ‘I would have to be very careful to do it for the right reasons.’

But . . . it’s almost like there hasn’t been that closure. This is the thing: I wouldn’t want to be selfish about that, because maybe they’ve had their closure. And I wouldn’t necessarily want to invite them in to help us have our closure, unless it was going to benefit them as well.

I had this vision of [the managing director of the contractor]. He was a very nice guy, down to earth . . . It would have been devastating for him. . . . There’s the impact of maybe having him along, and talking about it – especially to the sceptical people as well. I mean that could be tremendous. It could be part of our own healing, even though we don’t know we need healing, maybe. . . . Not that I’m sceptical, but I’m not sure if there’s any perceived need out there from our people, to put closure on it, in that emotional sense.

So this is where I would have to be very careful to do it for the right reasons. It would have to, as I say, benefit [the managing director]. I wouldn’t want to use him as just somebody to come and cure us of our angst in relation to what happened. But I see that there’s potential there to engage, where we’ve made no overtures whatsoever. Haven’t even given it a thought, to be perfectly honest. . . .
Obviously this is something that, I presume, is more than just research: this is actually happening. Is there – here’s me talking very structured sort of thinking – but is there a model for it? Are there ways of going about it?

Yes, there are.

Because I’d be interested to look into that. Maybe that’s something that we could have a serious look at. But I would imagine that, from the victim’s point of view [i.e. the managing director of the contractor], there’s got to be something in it for him.

What do you think might be in it for him?

The only thing that would directly come to mind is that maybe – but this is the thing. We have responded in the sense that we now have a pretty darn robust system in place to prevent future occurrences of this, but the problem is that because there is so much bitterness or angst around that system, I don’t know that I would want him to get a sense of that. I don’t know that that would be beneficial to him. Although, it might just take someone like him saying: ‘You’re all bitter and twisted. Get over yourselves.’ . . . Look I haven’t thought about it before today, so it’s fresh off the press.

TL17 | ‘What we’ve lost is that human element.’

What we’ve seen in the organisation is that the pendulum has swung. We have a fear factor, the fear of retribution, the cynicism around the legislation, and everything else. But what we’ve lost is that human element - why we got there in the first place. Regardless of whether it was right or wrong, regardless of whether the [OHS investigators] are a ‘bunch of bastards’ who had no right doing what they did and all the rest of it. Forget about that. At the end of the day, a guy died.

The [OHS] organisation is there for the purpose of preventing that from happening. We don’t necessarily agree about their modus operandi. But these people [the contractors] have seen very, very directly the impacts of that. Of course, it’s going to be their goal that all their stuff is safe in the future. So maybe there’s just that bringing it back into more of an equilibrium and saying, there was another really human reason for this.

TL18 | ‘It’s heart versus head stuff.’

The funny thing is that it’s something I’d want to seek legal advice on before I [participated in any restorative justice meeting]. I know that sounds crazy, but that’s the level of caution around it. Because I’d want to know what’s the likelihood of a civil suit? I’d be stupid from a business perspective not to actually look into that. It’s heart versus head stuff, isn’t it.

It’s ironic really, given that the purpose of the thing would be to help people get beyond the legal and to think about the moral, and yet the legal might prevent you from doing it.

You’d want to make sure you were safe in doing it. I’ll tell you what, there’s never a straight answer to your legal questions either. That’s the problem. I mean it could be best thing you could possibly do. She might be sitting there, twiddling her thumbs right now, thinking: ‘How can I take [them] to task on this?’ But after some overture like that, she might say: ‘Geez, why would I want to do that?’
TL19 | ‘I won’t necessarily let legal advice stand in the way.’

So would you ever go against legal advice, if you thought it was the right thing to do, to see them? Would you take the risk?

In my position . . . I have a certain amount of autonomy, where I can make decisions, in relation to these sorts of things. There have been times where I have done things contrary to legal advice. I’m pretty careful about how I document it and who I speak to about it. I will say what I am going to do. I would be very open about it if I did that. So generally, in that process I would have sought reassurance or permission to agree to do that, and put up a good business case for it. So certainly yes, I’ve done that. It’s different when you have a statutory obligation versus when you’re just trying to protect your arse.

On this particular matter, being that it’s been so ongoing and sensitive, I don’t know that I would get a lot of support, necessarily, to go outside legal advice. If anything, I would use my powers of manipulation to work on our lawyers, to give me some way of being able to do it. So that’s how I would do it with a sensitive issue if I didn’t think I was likely to get support within the organisation.

That sounds awful doesn’t, but you know what I mean. It’s not being dishonest or anything like that. It’s just trying to get a good result at the end of the day. Of course, what I see as a good result and what someone else sees as a good result may be entirely different things. But I’m mindful of risks, and I like to think that I take risks into account, when I’m making decisions on behalf of the organisation on things that could impact the organisation or myself for that matter. So to that extent I’m cautious. But I won’t necessarily let it stand in the way of doing what I consider to be the right thing.

TL20 | ‘I wouldn’t have any hesitation’

If the family came to you, through a facilitator, saying ‘We are doing this in good faith. This is not about collecting more evidence to take you to court . . .’

I wouldn’t have any hesitation in making a recommendation that we participate in something like that. No, not at all. Gosh. Psychology is my background. So I’m very mindful of the need to be able to put closure on these things, and all the rest of it.

Suppose you were invited to that, what would you want to say to the family? Just from your own perspective, since it’s a very personal, private conversation.

It’s very interesting, because at one level – and it would have to be very carefully thought out – because and certainly, yeah, ok, so you go in: ‘no [legal] prejudice’ –

No lawyers.

In these particular circumstances, I guess of course you’re sorry. And at one level you’re not in the least bit aware of anything that you could have done necessarily to have prevented the incident. But obviously had there been anything – gosh: we’d be so sorry if we’d overlooked something. I guess you couldn’t say that somebody out there doesn’t have knowledge of something that didn’t come out in the defence, but that would not be knowledge of mine. You would hope that somebody wouldn’t be sitting on something like that, bottling it up. That would really be awful.
I can’t really see that being the case in these circumstances. I could see that there could be circumstances where that would be the case, because of the way the legal system works. Even if you might have a doubt, you’re not going to say it.

**TL21 | ‘Two levels of conversation’**

There might be some of our guys who might say: ‘Oh look, maybe if I had realised in hindsight, you know, that [piece of equipment] we sent home that day. We’d seen the guys doing this, that and the other. Maybe if I’d thought about it, I would have seen that maybe they weren’t really being as safe as we thought that they were.’ Do you know what I mean? It might have been that wisdom of hindsight. It might have been nothing related to the incident, just patterns of behaviour or something that they should have twigged to.

So in many respects, I can talk from one angle, and in some ways, I would be [talking] on behalf of the organisation. But it would only be the guys who worked really closely with [the person who died] who would be able to have that kind of conversation and any closure that came with that. So I think there would be two levels of conversation.

**TL22 | ‘In the weeks following, they would have been quite open’**

*Do you think that they would be willing to meet with the family?*

I don’t know. Quite possibly, and quite possibly they already have. I don’t know. In the early days, they would have been operating (thinking) at a different level. Maybe not to the extent that they would have had that hindsight and thought about it; but I think they certainly would have expressed their distress and sorrow, and all those things, quite early in the piece, and before the great, big legal wave occurred. They knew the guys. They had worked with them for a long time. They were well known to them. They were mates. So I don’t doubt they’ve already had some of those conversations.

*If it was prior to the court case, would they have been saying things like: ‘There are things that we should have noticed, but we didn’t’?*

Possibly not, for a couple of reasons: not so much because it was prior to the court case, but maybe because you don’t know what you don’t know. Maybe through getting up to the court case, maybe that has enhanced their understanding of what their obligations are. Therefore, it might be more with that wisdom.

*So it could be a quite different conversation after the court investigation?*

Could be, yes. Because I don’t think, initially, certainly not in the weeks following the incident, that there would have been any fear of legal retribution or anything on their parts. They would have been oblivious to that. I think the director at the time was saying: ‘It’s nothing to do with [the OHS agency], don’t worry about it.’ Oh yeah, righteo! So from that perspective, it wouldn’t surprise me. They would have been quite free and open in their conversations about that. But I think honestly at that stage, everybody was totally mystified as to the accident and cause of death. And I don’t think anyone would have been looking at blame or anything like that.
`TL23 | ‘A lot of the guys have put it to bed’`

So after the investigation, when you know a bit more, there might be that opportunity for everyone who was involved, and who wants to be involved in this (it’s entirely voluntary) to get together to talk about what happened here?

Yep. I’m almost thinking though – it’s almost too late. Because I think a lot of the guys have put it to bed. I think the court case was very stressful for those witnesses. They would have just wanted to wipe it from their minds. I think we’re past optimal timing.

So what would have been the optimal time?

I think closer to the end of the court case. I don’t know. . . . Look, maybe not. Maybe I’ve misjudged that a bit. I don’t know.

Ok, I think a lot of them will have wanted to put it to bed. Whether or not they in fact have, maybe there might be something still niggling. Maybe there isn’t. I guess that’s where you give the choice: ‘Do you want to participate in something like this?’ - ‘No, thank you. I’ve put it to bed. I’m absolutely over it. I’m done.’ Or ‘Yes’. I would be reluctant to speak for them in that respect. I think choice is important though.

`TL24 | ‘They might be more open and less defensive if it’s in the past.’`

Most of the families I’ve spoken to hate the word ‘closure’, because, in their experience, there is no closure for them. So even though the employees might feel like they just want to put this behind them, if the family came with a request to meet, after the legal process had been completed, saying ‘it’s still not behind us’, how do you think people would respond?

I think in some ways that would be easier. Because I think it’s fresh and still a bit raw, for our people, at the start. Whereas even further down the track, they might be more open and less defensive. It’s very much in the past. They’re over any fear of legal retribution or anything like that. They could be just more free about it. They’ve had a lot of thought and time then to reflect. That would seem logical.

So a little bit more distance could actually be a good thing?

Yep. I mean I can sit and talk with you a lot differently about it than I would have earlier. Because I don’t have to be so defensive about it now. A decision’s been made. It’s just a fairly natural progression. . . .

`TL25 | ‘The wrong reasons’`

Do you think that kind of meeting – say if a lot of people were involved in it – might shift the focus from fear and bitterness to more ‘Ok, let’s be compliant, but let’s do it because it’s the right thing to do. We don’t want to have to put anyone through this again’? Do you think there might be a kind of cultural shift as a result of that?

It depends on the participants, I guess. I think the people that knew [the person who died] and were involved that were directly involved in all the legal stuff that came out of it, I don’t
think it would take much. They are already converted. They are already there. For the right or wrong reasons, they really are there.

When I say ‘right or wrong’, I mean, that’s the thing. I guess they now preach to the rest of the organisation - yeah, but for the wrong reasons: ‘Protect yourself from litigation’. I don’t therefore think it would shift their behaviours necessarily, but just shift their argument a bit, maybe.

**TL26**  ‘Here’s another way of looking at the world.’

*What difference do you think it would make, if they did it for the right reasons?*

There’s a different feeling about it. It’s not because of fear. It’s because of trying to do the right thing. It’s a different feeling that gets you there. It’s a more productive, constructive way of getting a result. It’s not because you’ve got a great big black cloud hanging over you. It’s to do with altruism almost. It’s because you’re wanting to do the right thing. So it’s a healthier way of doing things. I mean that is a far better reason for doing things.

I’m really wracking my brains, thinking ‘Do I have any confidence that anyone is doing it for the right reasons at the moment.’ No. There might be, but I’m not sure. I’m not aware – not directly or indirectly aware. So I can’t say.

But certainly the preference would be to be doing it for the right reasons – because you’ve seen the impacts and because you don’t want that to happen to anyone else. You don’t want it to happen to anyone you know. You don’t want it to happen to you. Because it sucks. That’s the attitude that you want.

*And could a difference be, in terms of behaviour, that you would still do it even if you could get away with it? That you would go the extra mile, or that even if no one was looking, you would still do it? Could that be a difference if people were doing things for the right reasons?*

Yes, I think so. Yep. You’d also feel better doing it for these reasons. It’s not because you have to, but because you want to. There’s no resentment about it or anything like that. You’re doing it of your own free will.

Lots of food for thought. I’m thinking, ‘How do I fit this in.’ Just thinking about my agenda. But it’s a really, really good question. . . . We have a leaders’ meeting every six weeks, with all the managers and the corporate management team. It’s almost something actually that I would take back there and say, ‘Here’s another way of looking at the world.’ . . . This is a whole different way of looking at it. We talk about our spectrum, but this is a spectrum of why we’re doing what we’re doing:

‘Because we have to ……………………………………………………….….Because we want to’
A. ‘We are certainly supporters of restorative principles. But we are also conscious that what is sometimes referred to as ‘restorative justice’, like family conferencing etc., is a really formal construct; and it’s obviously still really early days in terms of those formal constructs. There’s been research indicating what some of the benefits are; and we think that there [are] lots of benefits, but also on some of the down sides. So for instance with youth justice, where really early assessments of Family Group Conferencing indicates that, more than half . . . of the orders that are made following a Family Conference involve compensation. I reckon that to be flawed with youth justice.

But . . . we see those restorative principles as being much broader than just family conferencing or just victim conferencing or shaming any of the other sort of programs that might exist. We have also looked – both through the social workers as well as our own work – at some of those restorative practices, even within the existing paradigm.

So we do about 200 investigations a year. We will do about 120 prosecutions this year. It’s come down, but generally between 100 and 200 prosecutions. Of those, between 30 and 50 investigations a year involve a fatality; and of those – rough estimate – about half end up in prosecution.

The offences in Victoria are indictable, so they are really serious offences; and we have a policy position – that we’ve had now since around 2003 – that if we prosecute a matter involving a fatality, unless it’s exceptional – like that there is not causative association between the breach and the death (and that’s very rare) – that we will issue proceedings in the county court; and we will trigger, if we can, a county court trial in front of a jury, because of the significance of the consequences, that we’re dealing with somebody’s death; and that should be reflected in the nature of the court that hears the matter as well.

But within that, one of the things that we did in ‘05 was to employ two social workers because we recognised that, in fact, victims had rights; that it was something that we thought was growing over time: the prominence of victim’s rights and also the level of engagement and consultation that was required. And I think we were really leading the pack – in terms of other regulators around the country – in doing that. And even though the OPP – the Office of Public Prosecutions – has had a witness assistance program for many years, I don’t think it’s as comprehensive a service as the two social workers provide, where they provide crisis counselling in the immediate aftermath. We make immediate contact with the family; and they will, if the family wants, establish a formal relationship then that will take them to the end of the prosecution potentially, or beyond – although it’s obviously not something that’s indefinite: they do eventually need to close off the relationship.

So, is that how you see restorative principles being applied, by the use of those social workers?

That’s been part of our practice. But again, what they would be keen to stress, if they were here, is that they look at each client and each family in a different way. Their service is tailored towards that client and family. Some families are very complex, as you know, from
their dynamics. You might have two or three different parts of the family; or two or three families involved in the one fatality.

**B.** And other families are quite disengaged from the process. They choose to be quite at arm’s length from the investigation and prosecution process. We are very respectful of that boundary, and we never ever seek to encroach [on] that boundary. Because it’s important that we acknowledge the families’ expectations and acknowledge what the family wants. So it’s important that any restorative justice considerations, first and foremost, in our work, start with the family’s expectations.

**A.** Obviously we’ve done lots of training with the investigators and the lawyers, and our processes have really improved over time. We evaluate that with the clients regularly. We know that over time, that’s gone up. But some of the things that we’ve done for some of the families, for instance, is that we’ve taken them to the scene of an incident, and explained to them how it’s happened, whether through an investigator or a lawyer or the social worker. In some cases, the families are really intent on seeing – having access to documents and photographs. We generally will provide access to an investigation brief. We’ve got a policy that allows access without putting the family through, say, Freedom of Information Act, or anything like that. And that’s consistent with our colleagues at the Coroner’s Court.

We also provide a service, obviously within the Sentencing Act, for families to prepare a Victim Impact Statement. Sometimes we’ll facilitate the statement. We’ll help them draft it and obviously work with them to ensure that they’re supported in doing that, and similarly we’ll both prepare and then debrief them in relation to showing them the brief or any photos of the scene.

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**B.** In some cases, where we’re prosecuting the employer in a fatality matter, the family has a very strong relationship with the employer. . . . Perhaps that employer has been a very long term and supportive employer before the death and remains supportive after the death; and it’s important that we acknowledge that as the dynamic of that family. So we would never seek to polarise the family’s views against an employer, who may have committed an offence under the Act, but in a lot of respects has been a model employer in that family’s mind at least.

There was one matter in particular where one of our social workers . . . and I were invited by the widow of a deceased worker to actually meet with the principal of the employer. . . . The opportunity didn’t quite work out for us, but that was something we were very serious in considering; because the prosecution had ended and it was the widow’s wish that the parties meet. That was something we were very, very keen to explore. However the opportunity did not arise. . . . But the point I want to stress is that we are so sensitive. We try and be really sensitive to the family’s needs and use them as a reference point about – even thinking about broader considerations around what else the justice may look like.

*So where victims – the bereaved family – are wanting to speak with the employer, you’d be happy to facilitate that.*

We may not facilitate it, but we would of course not have the slightest objection to the family being in constant contact with the employer. It’s not a matter that causes us any difficulties. . . . We’ve had a case – the case I’m referring to – the widow kept moving...
between sitting next to me and sitting next to the employer, in the court room. It was a really interesting sort of dynamic to observe.

So that’s what makes occupational health and safety offences a different type of offences in that there has been a relationship — and often a good relationship — between the deceased worker, his or her family, and the employer. That relationship often continues. It changes, but it continues after the death. That’s something we’re very mindful of.

A. But it’s a really difficult thing. . . . [T]hose dynamics are different in every case. In some cases the employer is in fact a family member of the deceased. We’ve had that scenario. They have more in common, certainly, than we did with the family of the deceased. They took a very disinterested approach. In other cases there’s real hostility between the two, in the sense of outrage, that sort of thing. We work with families with varying levels of interest in the prosecution and also whether meeting with the employer or whether there’s some other restorative issue that they want to explore.

I guess we’d be keen to say to you as well that in terms of how we see restorative principles, we see them very broadly, and we wouldn’t assume that one family’s sense of closure and vindication in meeting with the employer will meet the needs of another family. Because for others it might be, ‘I don’t actually care about the employer. I want to meet the investigator or the inspector’. Or ‘I want to meet the head of health and safety, and tell him how this has affected me’. We’ve facilitated all of those options.

Or it might be that I want to tell my story to the media. With appropriate controls and a framework around that, which we’ve got, we’ll allow that to happen as well. There’s been some very real discussions in one matter where there might be some publication that comes out of a fatality. And again, that’s something that’s being explored with the parties. It’s within our realm to deal with it.

So I don’t see just a victim conferencing scenario as the only restorative practice that we would support, or not support. Because, as I said at the outset, we think it needs to be tailored.

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**Not as an alternative to prosecution**

A. Clearly, our legislative framework is such that we’ve got an obligation to investigate. We investigate all fatalities that are work–related, and then to make a decision whether to prosecute or not. If we decide that there’s a public interest in prosecuting, although we will advise and take on board the views of the parties, including the family, we are by no means bound by that, and in fact that wouldn’t override the public interest. Our decision of prosecution is also reviewable by the Director of Public Prosecution.

B. We should mention that [our agency] has conduct of the prosecutions in the Magistrates’ Court. Once they are in the County Court, the Office of Public Prosecutions has the primary conduct of the prosecution; so that whatever view [our agency] may take about restorative justice, if the matter is in the County Court, it’s a matter primarily for the Office of Public Prosecution; and that’s why I’m heartened that [someone has] been appointed by DOJ to oversee the general principles.

Our fundamental view is that whilst health and safety has those subtleties that we’ve just talked about, it’s actually a piece of criminal law; and the broader criminal law notions of restorative justice ought to apply to it. So it’s not just a unique pocket, although it has its own subtleties. Others would say that sex offences, for example, have their own subtleties...
that need to frame thoughts. But we see ourselves just as [much as being] in the criminal justice system, and needing the broader considerations. . . .

[O]ne of the [options] you proposed [in the Literature Review] was that restorative justice be an alternative to prosecution. . . . I don’t support that option because the purpose of prosecution is deterrence, both specific to the offender and general to a similar type of offender who, but for this enforcement action, may offend. That’s why we bring charges. That’s why we publicise the bringing of charges. That’s why we have all these media alerts and so forth, because it’s important that those who may offend. . . . [T]here are something like 300,000 employers in the state of Victoria, which means your category of offenders is quite enormous. So the purpose of the prosecution is all about deterrence. I’m not so convinced that a restorative justice process, as an alternative to prosecution, would actually achieve the same level of deterrence.

A. On that point, our view would be that this should very much be treated at a whole of government level. In a sense, in Victoria, as opposed to other states, we’ve been staunch in the law – and the law reflects this philosophical position – that OHS offences are criminal offences. We’re the only state in the country that has indictable offences made out of the general duties that exist in the OHS Act. They very much follow the criminal law paradigm. So the standard criminal courts, all the usual procedures and sentencing principles in the law, etc., apply. It doesn’t exist in other states. Certainly from a philosophical point of view, that’s really important to us in terms of the criminalising of the offence.

So we would want any recommendations around restorative justice to be consistent with whatever is happening in the general criminal law. So we’re not resistant of that, but we would want it to be a line. Because you wouldn’t want to say that OHS actually has a lesser standard; or there’s different arrangements, because we’re talking about the OHS Act as opposed to the Crimes Act.

B. It’s interesting that a very senior crown prosecutor at the OPP considers occupational health and safety offences which involve death as homicides. That’s a fact. Quite right. It’s a death. So that is something that is fundamentally important to how the law’s enforced. . . .

As I’ve been interviewing people, one option has kept coming up which is the idea of enforceable undertakings – which is one of the things that would be unique to this context. One of the main reasons why that’s been thought of as a possibility is not so much that people don’t want prosecution; it’s that the effects of prosecution can be so damaging to the family – how long it takes and so on. So many of the companies that end up being prosecuted have folded by the time the sentence has been handed down, that it doesn’t affect them personally. So no one is kind of ‘winning’ in those situations. So families and others have suggested, look, if we had a chance to voice our preference for an enforceable undertaking would that be taken seriously by [your agency] – where that undertaking was pretty rigorous and not just an easy ‘out’, but consisted of some serious . . . .

A. It’s almost hypothetical at this stage in this state. We’ve only had them since 2005. We followed a policy position that had been set already in Queensland – where they’ve got much more experience with enforceable undertakings – that they wouldn’t accept them in fatalities. We adopted the same policy position. It would have to be an exceptional circumstance before we would accept that – predominantly because our experience was that: firstly, most families didn’t see that as an option; and our overriding concern that these
are criminal offences, when we find enough evidence of them; and general deterrence is actually – and the supreme court, the court of appeal, have said this – is actually the primary driver of OHS prosecution, not just a driver as it is in regular criminal law. So whether you take a rape prosecution or not is predominantly dictated by whether there is enough evidence – but also the specific offender – to incapacitate that offender or punish that offender. In OHS it’s actually the reverse, because we have so much discretion about which prosecutions to take, and there are so few prosecutions, that the law has accepted that you’re actually taking a prosecution to make an example of a person so that others would be deterred.

So in a sense the families’ views are really important. But they’re not even primary in that context, is what the law says. And obviously we take them into account in the sense of prosecution; [and] we convey decisions in person, around decisions to prosecute and not prosecute (as a result of that whole knowledge that we’ve got: that sometimes people do get abused by the system itself, and that they are hurt by the system itself and the length of time it takes, etc., and we’ve certainly accommodated our practice to try and minimize that as we’ve learned more about how people go through that process). But I think that’s the biggest issue.

In terms of Victoria, we’ve only had 8 or 9 [enforceable undertakings]. They’ve been very low order in terms of initiatives. So you’d expect that anything that comes out of an enforceable undertaking would be commensurate with what the penalty would be in a court. So in our experience that would mean, at a starting point, it would be probably 200,000 to 300,000 dollars of investment; and then go up to whatever, a million, a million plus.

I think there are probably companies who would do that to avoid a prosecution. I think there are some families who would probably entertain that option as well. But we’ve not entertained it, at this stage, because of the reasons that I’ve said. It’s hard to imagine really.

If, say, there was an agreement between a company and the bereaved family to pursue an enforceable undertaking (that was as significant as you’re suggesting some companies might be prepared to go) what kind of political or legal levers would there be? Are there any?

Say they come to an agreement, and they say ‘Look, this is what we would propose happens in this case.’ So we didn’t negotiate it ourselves. I think we still have the obligation to exercise the prosecutorial guidelines to say, ‘Is it in the public interest to prosecute or not, and then what decision do we make?’ So our own view of how those guidelines operate, – and I think the Director’s view on how those guidelines operate (although he can speak for himself) – would be that that doesn’t actually avoid the problem, avoid the issue: that we would still, if there was enough evidence, be compelled to bring a prosecution.

B. There would be no general deterrent effect in that sort of arrangement. It would perhaps be hidden as an agreement between the family and the company; and it simply wouldn’t serve any purpose of deterrence – even though it was a bona fide attempt to come to an agreement.
the form of a Company doing a range of things for example, introducing a change to its health and safety auditing, or make a contribution to a charity, or pilot a project around the reform of health and safety. So if they are more esoteric aspects of the restorative process, then there’s certainly scope.

But we must stress that a fatality that’s prosecuted is really incapable of an enforceable undertaking – which is a contractual arrangement, rather than one that is imposed by the courts. The other aspect of the court imposed undertaking is that it has the sanction of the court, and requires the company to either be found guilty or plead guilty – which means there is commensurate remorse, which is very, very important in our prosecutions. A number of cases specifically talk about a company’s remorse, and how influential it’s presence or absence may be . . .

_Might there be room for a situation where the court says that they’re going to impose this undertaking, but the content of that could be negotiated between (at least part of it) could be negotiated between the bereaved family and the employer and then that becomes part of the sentence._

Not between them, but certainly that we would take into account their respective views, absolutely. So in a prosecution several years ago, which you might have seen – it’s one of the highest penalties ever, it involved a fatality – they were given one of the highest fines ever. But also the judge compelled the company to do a few things. One was to pay compensation to the family. One was to pay some money to a charity that was local. The other was to invest I think $50,000 in training for engineers . . . OHS training for engineers. The other is that he compelled the company to publish in the company’s annual report – it is a publicly listed company – their OHS performance. Then on a quarterly basis for three years they meet with the regulator. A board member was to attend on a quarterly basis to report on their OHS.

I mean that’s really the high water mark in terms of court–ordered undertakings. The family as I recall – I mean it was a tragic case – they were certainly pleased with the outcomes. They were consulted about the conditions, and their preferred charities, and how they felt about that – so that all that could be conveyed to the court. . . .

_I agree with your view about restorative justice not being one size fits all. In my view, conferencing is just a technique designed to achieve certain objectives; and there are plenty of techniques. It is unfortunate [that RJ has] become associated with one technique. The case you mentioned where there was a court–ordered undertaking in which the family chose the charities, that sounds to me like a good restorative outcome._

That’s why we look really broadly.

_Is that the kind of thing you would encourage?_

Absolutely. Did you have a look at the Macrory report in the UK?\(^1\) We have accepted those six principles of responsive sanctioning . . . as an organisation. We led, as just part of a tangential exercise, we led the other states into a national compliance enforcement policy that looks pretty much like ours. But one thing that we inserted that was new was the

Macrory principles around responsive sanctioning. And one of those is, as you know, ‘restoring the harm’.

So we are genuinely committed to that in appropriate cases. And we’re also getting more creative I think. We’re certainly encouraging – it’s very early days – we’re encouraging our inspectors, our investigators and our prosecutors to be thinking of those; and eventually convincing courts that there are appropriate ways. The Act kind of embodies that with the health and safety improvement projects; health and safety undertakings; adverse publicity orders. We’ve only just cut our teeth on a few of those.

_That’s certainly one of the issues that families have raised, that the standard fine doesn’t do much for them._

We in many respects would agree with that. Like you said, sometimes the fine is not paid, and there’s no way of clawing that back against the individuals. Then it is just purely general deterrence, because the individual defendant hasn’t been punished at all. . . .

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**A.** I guess you touched on a particular issue that we’re kind of wary of around the family conferencing scenario, where you bring together – for want of a better term, the ‘victim/perpetrator’ – in this case the employer and the family.

Firstly, I think it’s a bit of a formula; and as I said, we find that there is no formula for these. Families have very different expectations. Sometimes those expectations change over time. And as I said sometimes families have very different views, internally. So we’ve had a family involved in a case that was very anti–prosecution – the deceased had two families which is not unusual – and the other family was the opposite. And very different views about [our agency], about publicity and all of that. It beggars belief how you would approach that, when . . . [there is] an internal inconsistency amongst family members.

The other thing we would be wary of is that it doesn’t acknowledge that there is a power differential between the employer and the family. Even in that classic scenario where you’ve got, say, the widow of the person who’s been killed at work. The employer is in a very different position to the family, in terms of power and resources. Who represents them is disparate. So I’ve got no doubt that the employer would be legally represented and prepared for a case conference; and the family may or may not be; and [they] may have social workers and all sorts of other people assisting them, but may or may not have legal representation. [They are therefore] in a much more vulnerable state I think, notwithstanding that the employer may be facing prosecution. You’ve got things about: ‘Is it a big company or a small company?’ ‘Have I got other family members that are still employed by that company?’

And who represents the company is significant. The family can’t alienate itself from the process. They can’t say, ‘Well, I’ll send in my lawyer – I’ll send in the son and stay at a distance.’ It’s the family member that represents the family. In the employer’s case, they can distance themselves. They could actually send a representative of the company. So it could be the general counsel, or a director of the company, or a supervisor. It’s very rare to see a director in court for a prosecution. It’s almost always an operations manager or a HR manager, sometimes no company rep.
So, it kind of sounds like I’m coming up with all these excuses for why not to do it; but we’ve really thought through all the logistics. Because we’re actually supporters of restorative practice.

B. It should also be said that many of the families we work with are families where English is a second language. . . . [Many families] are from a working class background; and there’s a real, there may be a real cultural reluctance to be involved in a process like that, and a nervousness, or a fear about the process. They’d be factors which we really take into account in how we deal with, how we liaise with families. And they are matters that really need to be taken into account if there’s a conferencing model ever considered.

For example, the family in a very significant prosecution last year were from Vietnam, but were from Chinese background. They reached all these staging posts, before they finally settled in Melbourne. They were the classic refuge family made good because the husband and father who died was a terrific provider for his family. The widow would have been enormously overwhelmed by any direct dealing with a representative of the company. They’re really tricky things. . . . The widow observed that somebody in court, who was an officer of the company, was wearing that company’s logo, and it absolutely petrified her. So something like that was such an overwhelming thing for her. So there are matters that really need to be seriously taken into account.

A. If our boss was here, he would say: ‘a lot of the families (and I think that certainly has been my experience) are vulnerable from a whole range of perspectives, and a higher risk in that sense’. Not to say that that’s causative, that that’s why people end up being killed at work. But in fact we find that a really high proportion of the families that we deal with in investigations and prosecutions are clients of other government services – in terms of child protection, in terms of needing – you know whether they’ve got mental illness in the family, or are being supported in some other way by the government; and they’re vulnerable from other perspectives as well. So I think that’s also a dynamic that you would factor in.

I think about two thirds of the employers we prosecute are also small companies. So that’s again a factor that – it’s not a one size fits all. A small employer is affected very differently, in a very personal way, to a large company. Notwithstanding what the law says, they are also – as a matter of fact – much more vulnerable to prosecution on a personal level.

B. We should also say . . . that, from time to time, we prosecute individuals; and they may be employees, they may be officers of the company, they may just be other persons involved in the company. So the dynamics of bringing together an individual defendant and a family, would I think be quite different from bringing in representatives of a company that is a defendant. . . .

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**TM7 | RJ as a way of finding out what really happened**

*One aspect of restorative justice that goes beyond particular sanctions or reparation is the personal hurts and emotional trauma that the families go through. But also individuals in companies who feel a burden of guilt – even though it wasn’t intentional, they weren’t the only ones involved, but they played a role. But there’s no way for them to speak of that in a safe place, or to mention that to the family, or to describe what happened, or to answer questions or whatever. That’s something that’s restorative justice can do. Again, it needn’t be in a conference. It could be done in a shuttle process. Is that . . . ?*

B. I think, and I say this only anecdotally, it’s pretty clear to me that witnesses in the workplace – who have been either in the preceding events or in the aftermath of a serious
injury – do provide information to the family members directly. The information they provide is a matter between them and the family; but I have always gotten the sense – and it’s all anecdotal of course – that families sometimes are, I won’t say ‘better informed than the investigators’, but receive pretty direct information about why something happened, and how something happened, and who messed something up. So I think that that already happens in some matters – quite informally, and quite immediately as well.

A. I’m just trying to think of whether we’ve had any cases where we’ve actually facilitated a discussion or dialogue between the family and employer?

B. No, but we got really close in that matter I mentioned a while ago . . .

A. I think, in an appropriate case – obviously if it could be managed in a proper framework – we probably could. We certainly wouldn’t stand against that.

B. I think if the disposition at the court is a health and safety project or an undertaking, it would be a better opportunity to consider bringing the family and employer together; because there’s something to talk about that [is] hopefully forward thinking, long-term and will affect change.

Most of what our families tell us when we’re prosecuting is not ‘they’re a bunch of bastards, they should be prosecuted.’ It’s about ‘Make sure this doesn’t happen again’. Or ‘is it safe now?’ Or ‘what have they done to make the place safe’? So most families are not, they’re not out for a pound of flesh classically. . . . I never come across a matter where the death has been deliberately caused. They’re not accidents because employers have a requirement to provide safe working environments, but there’s never a deliberate act. So what families often express to us is ‘What have they done now?’ ‘Are the employees still at risk?’

A. Even clients of families that have been known to us for 10 or 15 years would still come up and acknowledge how much health and safety has come along since their particular matter, in a range of ways. First of all, we kill many less people fortunately. Many less people get injured. But also the fines have come along; the prominence of the message; the acceptance of the community; the maturity of the employers, etc.

A. But I was also just thinking – as you were talking around the employer and family coming together and being able to voice their grief, so to speak – that in fact there are avenues for that to happen. For the victim obviously, through the Victim’s Charter and the Victim Impact Statement. They are really comprehensive statements about their own loss, but also about the process. It’s not unusual to see people make Victim Impact Statements that are critical of the process that they’ve gone through, either the court process, or how long it’s taken, or that sort of thing. They do have that avenue. Those are now, as a matter of course, read out to the court. I think that that’s a really compelling thing for magistrates and judges to hear. . .

The Victim Impact Statements often reflect that family member’s view about the support, or lack of support, of the employer as well. And some of them are really positive in terms of the employer’s support and assistance. Others couldn’t be more damaging. That’s all entirely appropriate for the victim to have a voice, and to acknowledge their voice. The point about statements now being read is really important. It’s only in the last two years where statements are either read by the barrister that’s representing [our agency], or the OPP; or in some cases we’ve negotiated with the family so the family member will read the statement, or read their statement, or read the statements of all the family. That couldn’t be
more powerful or more moving. As a statement it’s really over-awing sometimes. So that does, in many respects, give the family the last say. The judge has the last say; but after the lawyers are said and done, the family has a say on the impact of the death on them, which is really quite profound.

What do you think the purpose, in the families’ mind, is in providing that statement?

B. There’s a bit of a legal framework around it. What we hope – we have publications as well as providing verbal advice about – is that the statement should reflect the impact of (can I use the word) ‘offence’ on them. We encourage families to write precisely as they speak; and some of them who come from backgrounds where they haven’t been strongly educated provide the most superb common sense, and really really articulate piece; and it’s fantastic to read, really from the heart.

A. I think it’s about recognition and acknowledgement; and sometimes about balance as well, having spoken to some families. . . . I’m thinking of one particular case in the court of appeal where the barrister for the company stood up and said a whole lot of positive things around the company that they clearly objected to and thought were wrong, but were able to set the record straight I suppose in the Victim Impact Statement.

Is part of it that they’re hoping to influence the sentence?

Unlike other states, in Victoria the court must take into account the victim’s views in sentencing. Most other states don’t have that provision. So in those cases it’s really just an issue of closure. Whereas here it does actually, I think, influence the sentence. It’s definitely relevant. They must take it into account. But I think it also has an impact.

Beyond that, giving that kind of statement in a court context is useful – it’s quite different from doing it in a kind of face–to–face scenario.

I agree.

Where there is that potential for response of an apology and remorse. It’s very different, your reasons for doing it, the impact of it, and so on.

Yes.

|  | RJ as a way to convey an apology |

A. Although I’m yet to hear it, it’s also open to employers to apologise and talk about their own grieving. Unfortunately, I think they get advised not to – which is the whole – I mean that’s what John Bottomley found in his report is that lawyers tell them not to speak with the families, not to apologise. I think that’s a really immature short-sighted way of giving advice, because most clever lawyers should be able to craft an apology that doesn’t admit responsibility. . . .
TM10 | RJ in a post-sentence context

One of the options that we wanted to consider was after the legal process has been completed, it’s all out of the way, done and dusted – at that point if, at the end of the day, people are still wanting to meet, both sides, with no legal outcome.

B. We’d be very interested in that process. Very, very, very interested.
A. In the same way, we’ve facilitated people coming in here, to address our investigators, or inspectors, or me, or whoever.

B. Some of the families we’ve worked with maintain contact with us even after the process has finished. They’re families who have very rich . . . information and feedback for us; and we continually – for example, when we’re producing any publication relevant to family contact, we actually (I’m going to use a really crass expression) test the market with those families. And test to see how they understood the document, how they were affected by the document.

TM11 | Using RJ for non-criminal harms

One other thing that we’re discovering through the interviews . . . were some of the hurts through the investigation, through the media, through [the phone company], through all the companies that operate. Those seem to be obstructing the grief process. They’ve taken them down avenues that they don’t need to go down, and that last a considerable amount of time. A letter is sent which causes them pain, and they’re talking about it years later. They’ll bring it out and show it to me.

I could share anecdotes [about] families, for example, a few days after the death they received a letter from the company – a faceless letter – saying ‘here’s a termination payment’, or something. Or ‘you’ve got to hand in your security card or keys of your dead husband’. It’s just unimaginably hurtful. So, yes, I’m really familiar with those stories.

I suppose we’re thinking that . . . along the way there might be room for a service that attempted to heal some of those misunderstandings and hurts . . . that offered a go-between that could approach both parties to just ease the way, so that the grief process isn’t hijacked by these things. What would you feel about that?

A. I’d be supportive, but again I think that – in that paradigm that we spoke of at the outset – it should be a whole of government justice intervention so that we don’t treat these matters necessarily differently to other offending that affects people in the same way.

TM12 | RJ should be under the governance of the Department of Justice

So if there was a generic RJ service, let’s say, for cases of this nature involving death by, say, dangerous driving or manslaughter – of a sensitive and complex nature – that service could apply in this case, in this scenario as well.

A. Yes, as long as people are consenting – you need the right person consenting.
B. And the service model was flexible to take into account the families’ expectations and their cultural difference and so on. . . .

[Also] we’re very much an evidence–based organisation – as most government agencies are – and we would want to see the evidence base and the effectiveness evaluated, and that sort of thing. These are highly scrutinized matters. . . .

A. [In terms of an RJ Service] we’d be great fans of it being progressed through [the DOJ] rather than elsewhere . . . and having all the sort of ethical and other frameworks that support those programs. I mean we’ve obviously got an in–road as a whole of government approach to things like the Victims’ Charter, the Criminal Procedures Bill that’s coming through, the Evidence Act, all of that sort of stuff. So we’re very much a part of a whole of government. . . . [Otherwise] I’d be very apprehensive, because I just don’t think it would get done in the way, in the best way, in the way that it should be done, if somebody who is actually a stakeholder is actually the central point in the process, or the development of the process. Because I don’t think that there’s any more legitimate a claim from . . . an NGO stakeholder to [our agency], a family, an unrepresented family, etc.; and we’ve all got our own very different paradigms and philosophies. . . .

[We actually want something to come out of this [report], because it’s a really valuable initiative. Certainly we’re a stakeholder in it, but we can’t drive something like that. But we are genuinely open to the suggestion. So we’re very keen to see how it progresses.
4. Criminal Defence Lawyers and Compensation

TN1 | ‘The legal risks are so severe, no one will do it’

*Do you think employers likely to step forward and take responsibility for their part in what led to a work-related death?*

I think as long as the legal risks are so severe, you’re just not going to get anyone to do it - whether they are big employers, small employers or otherwise. Because we’re talking deaths here, they will automatically bring a legal frame of mind to the table. That will either lead them to completely clam up and it will lead them to get legal advice. And if they do, I don’t know of a lawyer that’s going to tell them to say any of those things. That’s a product of the legal system.

_Could the employer be indemnified against criminal prosecution? Would that help?_

The only person that can indemnify against criminal prosecution is the DPP. Again, no lawyer is going to tell his client to talk in those ways unless he has that indemnity in front of him; and the indemnity’s got to come from the DPP. Whilst it remains like that, particularly in relation to deaths, the legal implications are so tough.

I think the harmonisation review will make it worse. Because what it’s recommending, for a national OHS scheme, [is that] deaths carry the potential of imprisonment. Well, if you keep upping the ante, it has the impact of closing down what, in my view, ought to be the real purpose of even bothering to investigate the death . . . which is, surely, to prevent it from happening again – to use it as an example of what went wrong and why it shouldn’t happen again.

__But isn’t part of what families are wanting is for people to take responsibility?__

That’s legitimate. But you’re just not going to get it if the outcome of that is of such serious consequence – such serious legal consequences.

TN2 | ‘I’ve never had a client that just didn’t care’

I think [the current philosophy of deterrence] is based on the assumption that most employers run the risk of prosecution and fines because they don’t care.

They care. They mightn’t get it right all the time. But it’s not a matter of, in my experience, employers saying: ‘Oh well, we’re not going to get prosecuted for this, so we don’t give a rats.’ That’s not true. I’ve never had a client that just didn’t care. Most of them are absolutely distraught that something has happened.

__So when they are prosecuted, what happens to that distress?__

Sometimes the emotion gets channelled towards [the OHS agency], negatively. . . . In a lot of cases, any feelings toward a deceased’s family will get lost in it.
The family often fall into the trap of: ‘We want justice’ – whatever that might mean. Mostly it seems to mean retribution. We fall into the old, ‘We all hate each other. You’re going to get taken through the criminal justice system. Then we’re going to get compensation.’ If that worked, it would’ve worked by now.

That’s why I am interested in restorative justice. I don’t have the answers. But I know that this system isn’t going to give us what you’re looking for.

Some might say: ‘Imagine what it would be like if we didn’t have it.’ . . . For politicians or for those wanting an easy answer, I think it’s sort of, ‘Oh yeah, well that’s right: imagine what it would be like.’ Well, it might be better! . . .

Sounds like an indictment on our entire culture. You’ve got to punish people for doing things wrong but there’s got to be the opportunity, at some point, for an alternative.

One of the other reasons given as to why the system goes down this road is symbolic. Society needs to show that it takes these things seriously and a prosecution communicates that symbolically.

That’s legitimate. My only question is: does the symbolism help to prevent the next one. I’m not sure that it does. I’d be surprised if there hasn’t been some research about it. I understand all the reasons why the criminal law has its symbolisms, all the psychological and sociological reasons why that happens.

But all of that is still on the assumption that it works. And I can only again say, ‘Well, it hasn’t for the last 400 years’. So maybe there’s a reason for a different way – at least enough for it to be explored. But you know you’ll have to - exploring a change means that the change will have to be justified far greater than just keeping the existing system.

OHS offences are indictable offences. In Victoria are not triable summarily. Basically this means that for indictable offences, the defendant or the prosecutor or the court in some instances, can take the option to have the matter uplifted to the county or supreme court, where you end up in front of a judge and jury.

The [OHS agency] recently seem to have taken the policy, in fatalities, you go straight to the county court. There seems to be a policy shift, but I have nothing to base this on apart from recent cases.

Now . . . that takes all the options away from an employer. If they say this is going to a county court for trial by judge and jury, then there is little option but to fight.

I don’t think the fines generally deter anyone, or more accurately, it’s not the fines that motivate people. People come to me and say, ‘We want to do this because we want a safe workplace.’ They don’t come to me and say they want to do this because so and so were fined half a
million. I’m usually the stick in the mud that says, ‘Well, there’s certain things you’ve got to be careful of, because you run a legal risk’. I say ‘I don’t really want to say this, because I know why you want to have all these processes in place – particularly investigation type processes.’

I had a client this morning who said, ‘Look, we want to keep doing investigations as a learning tool. But we want to know how to cover them with privilege.’ And I said, ‘Well, you can’t. There are reasons for such things being privileged and a learning tool ain’t one of them.’

So it’s a disincentive.

Yes. I said to them: ‘I think you’ve got to make a choice. Before you start the investigation, understand what the possible legal risks might be and make a choice at that point. But it’s your choice. That’s no incentive to them. Again, that’s an implication of the way this legal system operates.

**TN6 | ‘That’s a moral issue. It’s not a legal issue.’**

You mentioned that employers were distressed about what happened. Have you ever heard them say things like: ‘I wish I could talk to the family’?

Yes.

What sort of things do they say?

In some situations, I say: ‘Go and talk to them.’ Because they come to me for, almost moral guidance. ‘Go and talk to the family, if you think you can talk to the family. There are some risks, but I think you’re better off talking to the family.’ That’s a moral issue. It should not be a legal issue.

Even if they’re going to be facing prosecution, you’d still advise them to do that?

If there’s been a death on the worksite, you can almost pack it in. Companies will often swing into legal management mode, because the legal risk is so great.

There’s been a couple of cases in which I’ve said, ‘Look I can’t give you moral guidance. I’ll tell you what the legal position is.’ Some clients have said to me: ‘Well, what would you do?’ And I’ve said: ‘I’d go and talk to the family. To hell with the legal implications.’

And have people done that?

Yes.

What have been the consequences for them?

I had one situation where a family denied that the employer ever spoke to them. The family just said, ‘No they didn’t’. I sat in the car out the front and watched them go in the door, and watched them come out again half an hour later. But they denied it. The family denied that they cared, and said that ‘they didn’t even come around to see us’. I think sometimes people just forget that things happen; and work themselves into a position where, even if they are
reminded, they feel obliged to reinterpret, I don’t think it’s a lie. They’ve just forgotten. But then when they’re pressed on it, the hole is already dug.

*Have you ever observed a conversation between the employer and the family?*

I stay away. There’s no value for me to be there as a lawyer.

*Do they ever feed back to you how it went?*

They’ll always come back and say: ‘I’m glad I did that’ or ‘They called me every name under the sun’. There’s been a few. . . . I think so much of it relies on the personalities of the particular persons you’re dealing with, the employer and the family.

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**TN7 |  ‘The closest thing we’ve got to restorative justice is an inquest’**

*Suppose an employer said to you, I’d like to see the family’. What would you think if there was an RJ service available, so that you could say, ‘Go and see the service, and they’ll make sure that it’s done properly’.*

I’ve [referred them to a grief-support worker to organise a meeting]. A couple of times the employer just wanted to do it so quickly that it just wasn’t possible to organise. . . . Usually this is something that, if the employer wants to do it, they want to do it straight away – the day of the accident. They want to go around there and console the family.

I’m not sure that it’s a good idea to meet after the dust has settled. Everyone wants to analyse these things ad infinitum. That’s where you can start a fight. Because then people want to protect their own interests, whatever they think their own interests are. But if what you’re doing is consoling the [family]? I think it almost runs in a cycle. Initially, people want to console. Then at some later stage –

The law is such a stressful process for people to go through. I’m sure lawyers don’t take enough notice of that. In the same way that most professions and most trades even. You can get a plumber to come around who just thinks you know everything, he does - so ‘why are you asking these stupid questions’. Doctors and surgeons are no better. They just assume. ‘I’m a surgeon. I’m going to cut you open. What are you worried about?’ Well, I am worried about it.

Guilt is not and should not be the issue for the inquest. There are other issues that are dealt with. The closest thing we’ve got to restorative justice is the inquest. I think that would be the place for restorative justice. I think inquests shouldn’t be about legal responsibility at all. I sometimes have real difficulty just having lawyers involved in the inquest process. That’s not what they should be about.

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**TN8 |  ‘The death is so often coincidental’**

There are so many cases where the fact of the death is coincidental to what happened. Nothing was done by anyone to actually cause the death – in any other way than, well, if he hadn’t have got out of bed and gone to work that morning, he wouldn’t have died either. It’s often that far removed. Dare I say it, if he’d never been born, he wouldn’t have died either and that’s where that logic ends up.
The fact that an accident resulted in a death is, in my experience in road safety and in workplace safety, mostly – dare I say it – a matter of luck. . . . I investigated traffic accidents for 12 years. Sometimes the difference between a fatal and a bruised shoulder from the seat belt was a fluke. The same can be said of dealing with a fatality at work. The outcome was death, but with such a convergence of unbelievable coincidence.

So by prosecuting they’re shutting down the possibility of getting to the truth of what happened?

Well . . . remember that, in OH&S terms, the injuries have nothing to do with it, except that it is evidence of the potential risk involved. I reckon the potential risk involved in almost any situation is death. So the fact that it occurred can often be just a convergence of coincidences, rather than anything to do with what the employer or the employee did or didn’t do. Sometimes it’s got nothing to do with those two things, but rather that he or she was there at the time.

There must be cases where people really have done something wrong?

People usually have, because in my experience, employers will usually say, ‘Well, we really could have done that better’. How? ‘Oh, I don’t know, but we could have.’ How? In so many places they just want to beat themselves up. Doesn’t matter what you said. If someone was injured, therefore I must have done something wrong.

TN9 | ‘I’ve had clients . . . breaking down in complete tears’

If you removed the legal context, and people are saying ‘I could have done this better’ is that something the families might want to hear?

I can’t talk on behalf of the families.

Is it something that employers might want to get off their chest?

Oh, absolutely. There have been plenty of employers who’ve said: ‘I need to do this.’ The best you can do is get them to go to counselling or something. But even then, you’ll often get the question: ‘If I tell the counsellor, does the counsellor have to tell anyone?’ Well, actually yes. ‘Well, then I can’t tell the counsellor.’ So you become the moral counsellor, you’re managing the legal risk but you become the only person they can talk to. It is crazy.

So do you find ways to help them manage their feelings of guilt?

I’m not trained to do that. I’ve done it out of necessity. Because you’re there - you’re the one.

Particularly when you have families that want to hear that –

Yes, but you can’t tell them. As a lawyer, I’m then stuck with my own risks to manage. People will say that’s the best we’ve got. Well, maybe. Not sure. But it’s not good. I think sometimes the [prosecuting] lawyers don’t understand. This might be unfair, but I think they often see us as, ‘You’re just representing the bad employer.’

The fact is, that’s not the case. The employer will make decisions to manage its risk, whatever they might be. But I have never had a client - in the 12 odd years I’ve been doing
this - that didn’t care. I’ve had clients that showed that in varying ways, from breaking down in complete tears, to ringing me at 3 o’clock in the morning, saying: ‘I can’t deal with this. I can’t live with this’. I’ve had people threatening suicide because of what happened.

That never comes out, because there is nowhere for it to come out. That can’t come out in court. Even in a plea hearing, if you try to raise that, the other side will say: ‘Who cares about them? What about the family of the deceased.’ They might be crying, but ‘Sorry, you’re still alive. Imagine what we feel like.’ You get that sort of response. Why? Because there is no avenue, or method by which these things can be openly aired by people.

I’m even reticent to say employer-employee, because you almost set up the conflict straight away as soon as you talk in those terms. I think that is an indictment on where our society, for whatever reason, has taken us. Employer versus employee.

**TN10 | ‘You’d put out the invitation I suppose’**

Given that it doesn’t look like doing RJ is feasible before the court case, could we explore whether it could be done after?

I think you’re right. Certainly, in the short term, to do it before would be almost impossible, just because there’s no way the system’s going to change. How long afterwards? . . . You’d put out the invitation I suppose. . . . If it’s not compulsory, why would they do it? . . .

It would be interesting to see, in some kind of pilot project, just how it would unfold. . . . With around 30 work-place deaths per year, that doesn’t give you much of a statistical population to work with. So you’d have to run something for a reasonable length of time to get any reasonable view about. Maybe, in the end, that’s the only way to gauge whether or not there’s going to be any sort of engagement with people – on both sides.

Maybe, in the end, with all best endeavours, you’ve just got to throw it in and see what sort of reaction you get. It’d be a pretty steep learning curve, wouldn’t it, to try and do it, to try and run it. The first one would be – and they all would be, because you’d never know what the reactions were going to be.

But you’d want to throw the invitation out, then you’d have to interview both of them separately: ‘Is this something you want to do? Why do you want to do it? What do you think you’ll get out of it?’ . . . So even the process itself, assuming that you got positive responses, would take some months, I would think.

Yes. For murders, it’s an average of 6 to 18 months to prepare.

So are they doing it for murders now?

Yes

That’s good.

Not in Victoria.

Elsewhere? In Australia?

Yes, in NSW.

So what’s happening there?
It’s all post-sentence. Usually they are in prison, sometimes after prison. It’s usually victim-initiated. The process takes a long time. But it’s almost always positive, because they get answers to questions: Why it happened, what was the last thing they said before they died, that sort of thing. It gives the person responsible a chance to say how sorry they are, and they can start to deal with some of their grief.

Clearly, in some senses, that’s the model I suppose. I think it actually has more potential, in my view, for work-place deaths than it does for murders. Again, that’s coming from having seen both. It’s not just because I work in workplace safety. I’ve been 12 years in the police force. So I’ve seen both sides. It just strikes me as having more potential for work-place deaths where both parties – you know, this wasn’t done intentionally, as murder would have to be, or reckless. This was in a true sense an accident. The accident might have been avoidable, who knows. Do the parties in the NSW model, is it all optional?

Yes.

What’s the take up rate like?

They don’t do many cases, but most people who are responsible agree to do it.

That’s good.

It’s not for everyone. It’s a low profile service. That’s partly because of funding, and the small number of staff.

I might be completely wrong, but it seems like it would have more potential for work-place deaths than for murders. Clearly you’ve got a model. . . . It’s something that, in years to come, I think I’d like to be involved with. Once I’m out of this profession, I think it’s something I’d like to be involved in. It just seems to me to be something . . . could actually have a long-term impact on the system.

One option that we’re exploring is to have RJ in the context of community-based orders. This would be where the judge sets a certain amount of hours of unpaid work, and then the restorative process is the forum within which people decide the type of work is to be done to complete the hours. That is then written into the sentence.

Perfectly reasonable way to do it. It’s a sentence that is, I hate to use the word, ‘victims’ have got some input into. . . . I think that’s some way off. My guess is that would be property damage type cases or assaults, but certainly not fatalities I would have thought.

No, but I’m wondering whether something like that . . .

I think you’d probably have to get over the hurdle of fatalities first. Given that you might get over that, surely that’s a model that should be used for all the other prosecutions that are brought.

So for injuries and things like that.
There are prosecutions that don’t have injuries involved. If you haven’t ‘provided and maintained a safe workplace for your employees’ - nothing in there about injury. Companies get prosecuted on that basis, without any injuries or accidents or anything else. . . .

I don’t like the enforceable undertaking model. I don’t like the way it operates. In the end, what’s the difference? OK, the money that would otherwise go to Consolidated Revenue, through the paying of the fine, goes to some community project directly. Well, the money in Consolidated Revenue should go to community projects. It should end up in the same place. I get cynical about this, and say all it does is relieve the local council or the state government from prioritising things that need to be done. That’s their job. Hardly the court’s job.

Much better model, the one that you’re proposing, where the people actually involved can have an input. That might happen through the backdoor. [The OHS agency] might sit down with those people and decide what they want done. But it’s sort of through the back door. Why don’t you do it up front, face-to-face? . . .

Why do it behind the coat tails of lawyers. I just think we get in the way. Get us out of the picture. Because while we’re there, you’ll always get some lawyer wanting to say: ‘Oh no, don’t say that. Don’t answer that. Don’t answer that.’ That process can’t work unless it’s entirely open, and without there being any further implications, we’ll work out the penalty. Seems to me to be a much better – maybe it just has the potential to have much better results for everyone.

Again, in the end, an enforceable undertaking is run by the court, its run by [the OHS agency], it’s run by the defendant, and they’ll all have lawyers involved. Is it really an alternative? It’s not an alternative.

In our experience [the OHS agency] won’t entertain it, unless charges have been laid. It’s hardly an alternative if you’ve already been charged. . . . The only way it’s going to happen is if [the OHS agency] gets an indemnity from the DPP, and say ‘Righto, this indemnity is given to you on the basis that you are going to enter into this enforceable undertaking.’ But that’s such a chicken and egg. But because you’ve got these legal risks sitting around, it almost becomes impossible to administer. . . .

The community-based order idea could be in addition to the fine, as part of the one sentence.

I can see the difficulties in trying to draft the way in which it would happen. But again, if it was up to the court to order everyone to attend that - if what you’re actually trying to get to is to have people come along voluntarily, and not be ordered to do it - once you ordered to do it, they’ll close up.

They wouldn’t be ordered to do it. It would be one way of . . .

It would be one way of complying with the community based order. Well, it certainly has, on the face it, some real attractions. . . . And more attractions than this, because the employer and the people involved with that company are always – they care. But they have no opportunity to show that. In fact, the legal system really does clamp down. It says: ‘No, you can’t show that. So you just bottle it up.’
**TN12 | ‘Why would I bother pleading guilty?’**

_Do employers tend to go in with a plea of guilty or do they always try and defend?_

Oh no, more plead guilty than defend, certainly in my experience. But there are now more disincentives to plead guilty, for instance, just the size of the fines. The legal system is so far divorced from the emotional roller-coaster that you’re on.

So the fines keep going up, and the other penalties keep going up; and then a lot of people say, ‘Well, why would I bother pleading guilty. I might as well try and fight it.’

As soon as you enter that plea of not guilty, the family are going to say, ‘You bastards.’ At that point the damage might have been done. I’m sure some families would want to ask the person: ‘Why did you plead not guilty?’ And the answer is not because the lawyer said so. There are often other reasons why you might decide to do that. It’s very difficult, I know, for the employee’s family to understand that there are commercial implications to all those decisions, but that’s the reality.

**TN13 | ‘How do you show remorse in the legal system?’**

_Do you think that one of the problems is that the legal system simply isn’t designed to take into account these kinds of private concerns, issues and emotions and the morality of the situation?_

And when it tries to, it stuffs it up. Badly, in my view.

So when you plead guilty, it’s got nothing to do with morality.

It’s supposed to be hinged on remorse. But that’s after you’ve made the decision that you did it. And there’s all sorts of reasons why you would still say that you didn’t do it. So there’s so many competing issues.

How many times have you heard victims’ families - in murders or car accidents - say, even for a guilty plea: ‘He didn’t show any remorse.’ Well, he pleaded guilty. How do you show remorse in the legal system? Your lawyer stands there and says: ‘He’s remorseful’. How else do you do it? I think there’s an expectation that is driven by the media that isn’t accurate, and so sets up expectations that just will never be fulfilled. . . .

**TN14 | ‘You do actually have responsibilities yourself’**

_It is interesting that when I interview bereaved families, the perception is that employers are culpable, they are negligent, they are reckless. Is that a mistake?_

It’s often unfair, ill-informed and driven by this litigious system of ours. For those people, they almost have to say that.

Just to give an example, there was a case where the employer didn’t give out a helmet to his workers, and the employee would have survived otherwise. That looks like negligence.
If that was the case, then yes. But what I often find is that the helmet was sitting in the front seat of the truck. ‘I didn’t want to wear it because it was too hot’. ‘I didn’t want to wear it because I had a bit of a rash on my head.’ ‘I was all sweaty and I took it off.’ You only have to dig a little bit deeper beneath the surface and all of a sudden there’s more to it. ‘Oh I left it at home’.

*Does the employer have a responsibility to enforce that?*

He can’t have a responsibility to stand next to somebody every day of their working life. There’s a point at which those people have to say: ‘Here’s my hard hat. I’m doing something where I need to wear this hard hat. I’ll now put it on.’ Otherwise you’re suggesting that someone in a car without their seatbelt on is somehow a victim when they run into the back of a car and break their chest on the steering wheel. No one has much sympathy for those people. Why are we having sympathy for people who don’t put on their safety equipment at work and yet when you’re in a car, it’s all about individual responsibility.

I think there’s a real issue with that - ‘individual drivers must take care of themselves.’ You get to work, and hear ‘Individual employees must take care of themselves.’ No – then it is the employer’s problem.

*And if they’re not provided with that safety equipment?*

Ah, different story of course. Mind you, if you buy a car that hasn’t got seat belts and you choose to drive it.

*So you still have a choice to walk off the job?*

Still have a choice. ‘No I’m not doing this.’ They’re the sort of things that employers quite rightly say: ‘Geez, we’ve got all these hats hanging up in the room, and he didn’t take one.’ Oh, well you should have been standing there making sure he took it. Come on.

At what point are people responsible for themselves. In fact the legislation says that they are. If they were civil cases, then there would often be a huge element of contributory negligence. But these are not civil cases, they are criminal cases. And you are either guilty or not guilty.

These are the sort of things that you would hope would be discussed somewhere. I don’t know how you would negotiate that discussion, because it seems as if, whoever was saying it, would seem as if: ‘You’re taking their side’. I don’t know how you get that sort of message through to people. You actually do have responsibilities for yourself. It never ceases to amaze me that we are so quick to blame individual drivers for road safety, and yet for work safety - Oh hang on, install boom gates on every crossing and maybe the trucks wouldn’t keep running into the trains. But it is the truck drivers who are charged.

But the initial reaction is to blame the employer when something goes wrong at a workplace. The initial reaction is always to blame the employer. The employer must have done something. We don’t know what yet, but we’re going to find it. Well, what message does that send to the employees’ families? No wonder when you speak to them they say: ‘They’re negligent. They’re culpable. Our bloke’s dead, so don’t blame him.’

*So they’re looking for answers that they can’t find because the truth is too hard to hear – or they are not allowed to hear it?*

There should be the opportunity for that to happen.
I’m reading a real interesting book at the moment by Dan Gardner, called the ‘The Science and Politics of Fear’. He talks a lot about the head and the gut. The gut decisions you make are going to be very difficult for the head to overcome. And if a gut decision is then reinforced by authority, that’s it. There is no coming back from that.

I think the whole restorative justice thing would be of equal assistance to the employers involved in workplace deaths.

One of the things I do, if I get instructed early on in the piece, is get to the scene very quickly. The reason I do that is that I want to talk to the people directly involved straight away, before they think about what they need to do to cover their arse – to get to the truth.

So often they say to you: ‘I really f----ed up didn’t I.’ It’s not until later on that everyone runs and by later on I mean 24 hours. For the first 24 hours, everyone’s there – everyone’s on the same side. Employer, employee: it doesn’t matter. When this [division] happens, is when I arrive, or when the union arrives, or some intervening authority that says: ‘You’re not talking. Run away.’ And then they start making up their stories. I don’t mean lying, I mean re-living the event and deciding how they want to put the spin on it.

I often go dressed like this, because I don’t want to walk on a site with a suit and tie on. I will always introduce myself and say who I am. But at that point, these people will tell you what they feel at the time – rather than a regurgitated view of the facts, having thought about it.

So you’re saying that the feelings at that moment are more likely to be a correct view of what happened?

That’s my view, yes. Because I do think people, on all sides, after the moment re-interpret things (I’m talking about investigators too, having been one for some time). Facts are interpreted to fit your particular hypothesis, your agenda, depending on what your job is. If your job is to turn up on a work site to investigate an employer because an employee has been killed, then it’s pretty obvious isn’t it.

I think the roles of the government authority should be split. One of those roles should have nothing whatsoever to do with law enforcement. Once [the OHS investigator] walks on site, that is legal risk. There you have it. What is all this about now? Legal risk. Everyone’s got to manage it. So everyone runs: runs to their opposite corners.

Not only for fatalities, but for other incidents, I don’t think that law enforcement should be dealt with by the same organisation who deals with all the other aspects of workplace safety. In my view that organisation ought to be absolutely separate.

It makes for so much confusion for employers. So who is this? Is this my insurer, because this is who I pay my money to, to insure against worker’s comp claims? Or is this the guy who is going to serve the summons? Well, they’re the same - sorry, but. So you sort it out. Well, the way they sort it out is: ‘I don’t want to talk.’ Step away.

I don’t think there is an overarching principle in the system that directs how this is all going to operate. If there is it’s the principle of confusion.
I know this is not directly to do with restorative justice, but in a sense it is. All of it goes to inform an employer, that if they are involved in a death, they should shut up.

**TN17 | ‘They are just people.’**

*What do you think about the view that there is a huge power imbalance between the bereaved families and the employers?*

I don’t think there is. I think the power imbalance, if anything, lies the other way, once there is a fatality.

*There was a concern that if you put them in a room together, a big business would just walk all over the family.*

They are people. They’re just people who’ve been emotionally affected by something that they probably had no causal connection with whatsoever. It’s really a conspiratorial view that if a death happens on a worksite, the employer must be negligent. That’s why the system is so f---ed up - on both sides. I mean if you’re an employer, you’ll say the same thing. Because it just sends everyone to those corners, so you never talk.

There’s no intention to kill anyone. If there was all this going on, why aren’t the [OHS prosecutors] charging people with the offences. They’re not, because it doesn’t occur. And that’s exactly the experience I have. It just doesn’t occur. These people are genuinely, I have no doubt, they are genuinely very badly affected by what’s happened.

**TN18 | ‘You’re relying on good will and open-mindedness’**

*Part of the central point of restorative justice is that people come forward and say: ‘I contributed to this in some way’. But what you’re saying is that that would be a misrepresentation of what’s gone on. So that what they need would be a kind of mutual grief support, rather than . . .*

Yes. There’s no point in standing there and saying, ‘Yeah, I contributed to this’ - and the family saying, ‘Yeah, you pack of bastards.’ In most workplace cases, the deceased, seriously, the deceased also did something that contributed to the situation. They’ve done something that a colleague has told them not to do. They still do it.

*Supposing that that came out in the first part of a restorative meeting?*

But then you run the real risk of it becoming a slanging match. You’re sort of relying on the good will and the open-mindedness of all involved. . . . I guess what happens in NSW is that sort of assessment is made with the parties involved before they put them in a room. If they’re just going to hold their line, then what’s the point?

*No, you wouldn’t. What would happen is that people would be willing to come to talk about what actually happened and everyone’s contribution to that. And they would be willing to say it and hear it, not to have a fight about it. And a lot of that would be resolved before you got there.*
Yeah. You’d have to put those things to each of the two parties, and say: ‘Well they’re going
to say that you didn’t do this, or did do this. What do you say about that?’ And presumably if
the response was, ‘Well they can get f---ed’, then you pack it up.

*It would be like returning to the first 24 hours, in other words.*

Is it going to happen? I don’t know. Hope it does. Hope you guys can push it to that level. I
think you ought to be bloody canonized if you can. . . .
TO1 | ‘How do you get around the legal stuff?’

I think we recognise that - not just for the victims but also for the people involved, so the managers, the business owners etc. - there are some major issues. Really, for us I think the main issue is: How do you get around the legal stuff? Because everybody’s worried the minute there’s a major incident. They’re really worried about what we’re going to say: whether they’re going to say the right thing or the wrong thing. Even before they start thinking about ‘What’s my legal liability?’ they’re still worrying about ‘Am I going to say the wrong thing to this person?’.

As soon as the lawyers get involved (which we advise: if you’ve got a serious incident you’ve got to get a lawyer quickly, you’ve got to have your legal privilege) then you are in that track of ‘Don’t admit things’. . . .

Luckily, back when I was a safety manager I never had to deal with a fatality. But since I’ve been involved in [this compensation company] I’ve been involved in a case where one of our members had a fatality. I was there on the day that it happened. The message from the lawyers was: ‘Well you can’t say anything. You can’t do this, and you can’t do this’. . . . You’ve got to make sure that you balance that. You have to at least talk to the family.

I’m not quite sure how you fix the legal bit. Even in incident investigations, if we’re asked to help an employer investigate an incident as health and safety people, [we] have the member engage us through [our] legal arm. This is so that any work we do has legal privilege, because nobody wants stuff used against them. So it’s about how you do that without people feeling that: ‘Anything that I say to this seriously injured worker or to the family of the person who has died is going to be used against me in some later point of time’.

I think that at the moment – and I’m certainly not a legal guru – but I think at the moment, it’s potentially too easy for the conversation that was had with the family – ‘Look I’m really sorry and it was all my fault’ (which might be the conversation that happens early) to be used later on in a prosecution: ‘When it happened you said it was all your fault. But now two weeks later you’ve had legal advice and you’ve changed your story.’ ‘No it was just at the time I felt it was my fault.’

I mean it’s like the advice you get when you have a car accident. The insurance company say: ‘Whatever you say, don’t admit that it was your fault - even if you think it was’. It’s that same sort of concept.

TO2 | ‘They haven’t had the opportunity to do what they need to do’

I remember reading a report which was done through CMN a few years ago about the suffering that the managers and the business owners have, and that often the business ends up falling over because they fall apart. I can’t help thinking that part of that is because they haven’t had the opportunity to do what they need to do, which is deal with it and address it and have the appropriate support, so that they know how to handle it as well.
In America, some states have laws covering medical negligence cases, in which medical staff are allowed to apologise and admit fault without that being used against them in any subsequent prosecution. Do you think that kind of thing . . .?

Look I think it would help. It will be interesting to see what comes out in the national OH&S review, if there’s anything being recommended. Because clearly we’re looking at that approach to give us hopefully the structure we’re going to have in the future. So it will be interesting to see if they make any recommendations. Because there’s a lot of discussion in the review, not about necessarily the restorative justice side of things, but the fixing the problem side of things.

Employers are nervous about identifying a major problem because if they fix it, that proves that that was the problem was. So they’re afraid that what they do in the investigations doing their corrective actions are going to help prove that it was reasonably practicable to do it. A lot of the cases show that the fact that somebody has been remorseful and that they’ve put control measures in place actually reduces the fine, but it is that whole thing that ‘if I fix it, it’s just admitting that I did it’.

So there have been discussions about that in the OH&S review. So it will be interesting to see how that’s reflected in their report and what opportunities there might be to incorporate this sort of concept in there.

So people are talking that way now?

Well, not necessarily. We certainly didn’t talk about restorative justice and I don’t think it was a question that came up in the review. But we were talking about the risk of a prosecution can stop people from doing the health and safety controls that they need to do. So if the recommendations identify some way to address that, it might be able to utilise the same approach to enable the restorative justice type approach.

Because included in RJ would be plans to rectify whatever it was that caused the death in the first place, so it could feed quite well to that objective.

One of the things that you highlighted in [the Literature Review] (which is one of the challenges) is who is it that does the apologising in a large corporation. In the one that I dealt with that had the fatality, it was fairly straightforward. It was a managing director and an operations manager and that was it. They were fairly small. It wasn’t an issue. But when you get into the sorts of organisations I’ve worked in (where there are 800 people on site and there is a parent company in the States) who is it that does the apologising? Is it the Production Manager? Is it the Line Supervisor? Is it the Maintenance Manager who got it wrong? Is it the Safety Manager who didn’t have a high enough priority on it? Is it the CEO? If it is about [being] restorative for everyone - not just for the victim - how do you make sure that it is restorative for everyone in that management structure who needs it?

Could you imagine all of them in some kind of forum coming together to take responsibility for their part in what happened? So no individual would be saying, ‘It was all me.’ They would say: ‘I played this role, and I contributed’.

Could you imagine all of them in some kind of forum coming together to take responsibility for their part in what happened? So no individual would be saying, ‘It was all me.’ They would say: ‘I played this role, and I contributed’.
Yes, possibly. It would be interesting. I don’t know. It’s so much different to other criminal law isn’t it, where it’s one person and that’s fairly easy.

**TO5 | ‘There’s a lot of organisational finger-pointing’**

The other difficulty with the health and safety law – compared to the other sort of law – is that it’s often about omission, not about action. If it’s somebody who’s killed somebody in a car accident because they were speeding or drink driving or whatever, it’s very clear to say ‘That was your action’. I think it’s a little bit harder to identify [who was responsible in a workplace death]. . .

People are unlikely to say: ‘Yes, I’m going to buy into this process’ because there’s a lot of organisational finger-pointing when a major incident happens.

*Do you mean they would be afraid that if they stepped forward, the organisation might turn against them in some way?*

Yes, quite possibly. Or they might get off in the legal system, but that’s the end of their career. . . So if you’ve got half a dozen people in an organisation who have contributed, they’re not necessarily going to step forward and say, ‘Do you want to include me in this process?’ Which is probably part of the challenge there as well I think.

*So you would probably need organisational support for the process: to back up the people who did step forward, encourage them and not penalise them for doing that. Can you imagine that happening?*

I’ve got no idea how you would do that.

*Does it sound possible, or is it just . . . ?*

I think it’s incredibly, incredibly difficult. All of the legislation across jurisdictions in Australia has some level of liability or penalty associated with the senior officer not doing things. The recommendations in the first report of the national OHS review were that the senior officer should have a positive duty to ensure that there is health and safety there. So once again it’s that individual senior officer who may not want to step up and say ‘sorry’. That puts them in the firing line of obviously saying that they believe it was something that they could have had control of. That would be part of the test I would expect, that they did all that was reasonable or it was something they couldn’t influence. So they might all be wanting to duck for cover saying: ‘I couldn’t influence it: therefore don’t come after me for prosecution’.

*So they’d be worried that if they stepped forward for restorative justice that confidentiality, which you would assume would hold, might not hold.*

Unless it was . . . more about looking at how it will benefit the victim rather than how it will benefit the others. Maybe . . . participation in restorative justice [would have to involve] everyone who could be classified as a senior officer. [The] process [could then start by holding] an open facilitated discussion with [the senior officers] to try and identify what the organisational contribution was. Then the CEO adopts that position and does the apology or whatever on behalf of the organisation.
That would make it harder for them to scapegoat people at the bottom, if the people at the top are taking responsibility.

Yes.

**TO6 | ‘You want me to open all that up again 7 years later?’**

*What would you think of doing it after the legal process has been completed?*

I think it’s too long. I don’t know. How do you think something like that would work two years after the incident?

I suppose a lot of the people I’ve been talking to, families, it’s 7 or 15 years down the track, and they are still angry and still in a state of ‘I can’t move on yet’—even though they have perhaps completed the legal process. Some of them haven’t yet, it’s still 7 years, and they still don’t have the answers that they are looking for, because it didn’t come out in the investigation or whatever. They’ve never really received any kind of apology or anyone to step forward and say—when they knew there were people who were responsible. So I guess there’s that kind of situation we have in mind. There’s no longer the threat of prosecution because that’s all been done and dusted. But there are still some outstanding personal issues, questions . . .

I suppose my question there is, ‘Is that beneficial to the victim’s family 2 years or 3 years down the track, or is that too far away from . . ?

It would obviously be better sooner, but my sense is that even if it’s 7 years, they still have unanswered questions. It doesn’t go away. For them, they talk to me and they are still crying 7 years later, because they don’t know what happened.

Certainly, if it happens after the legal process, well that’s obviously a much better place to be doing it. When it’s all complicated with the legal process, I don’t think people will be completely honest with themselves. I suppose it’s self-protection. It’s an automatic thing. You know the concept of cognitive dissonance: ‘I’m a good safety manager; therefore I couldn’t have contributed to that.’ You just come up with all the reasons why it wasn’t you.

*If you were talking to someone like that, how would you appeal to their humanity to kind of break that down a bit?*

I think you’d probably do it from two perspectives. One would be that: ‘The family have a right to know what happened’. But I think also about: ‘And you’ll feel better too’.

But I would think that the only way that it could work well would be a process with, say, if it’s a particular manager, [to speak with them] first about: ‘This is what this is about. This is where it’s going to go. We need to help you work through your issues to enable you to then do this honestly.’ I would have thought the worst thing that could happen would be to start the process and then find that the manager who is involved isn’t being honest. I would have thought that would be even worse for the victims, than having no process at all.

So you’d really have to get the manager – or whoever else in that process – really to a point where they recognise all the issues and they’re prepared to be honest with themselves first.
One of the challenges with seven years down the track is that the family hasn’t moved on, but potentially the manager has. They’ve worked out where they’re going to bury that bit in the back of their head. It hasn’t gone completely away. But they’re not confronted with the loss of a family member every day, so they’ve been able to bury that. How do you get them to be prepared seven years down the track to open it all up again?

I think the natural tendency when something first happens is to apologise etc. But the lawyers stop that happening. Then: ‘Well I haven’t had the opportunity to do that, therefore I’ve go down this track. And now seven years later, you’ve come to me and you’ve said you want me to open all that up again?’

The other problem with ‘seven years later’ is that the organisation might be a very different place. The CEO might say: ‘Let’s get the whole management team together’. But they might be far-flung by that time, in a large organisation.

**TO7 | ‘Enforceable undertakings can help’**

*So the sooner the better from your point of view?*

Well, except for that whole legal issue. And that’s potentially where enforceable undertakings can help. In some jurisdictions you have to say ‘Yes, we are guilty and we are going to buy into the enforceable undertaking.’ In some other jurisdictions, you can get an enforceable undertaking without actually having to say ‘Yes, we were at fault.’ But either of those options, if the enforceable undertaking means that, ‘As long as you do X, Y and Z, you’re not going to be prosecuted’, then restorative justice, I think, could be built into enforceable undertakings. And that way it can be done a lot earlier.

*The main obstacle in Victoria, it seems, is that, whilst there’s no legislation that would prevent that, it is WVA’s policy not to use enforceable undertakings for a death.*

Right, of course.

*Would you know why there is that policy?*

I think it’s probably because of the community demand that a death is so severe it must have a prosecution associated with it. I would expect that’s probably the reason why. . . . The families might also be demanding that as part of what they expect as well.

*If you were to try and make a case for the use of enforceable undertaking for work-related death, how would you argue for that?*

I think you could only argue it on the basis of the benefit to the victim’s family, because [the OHS agency] sees the prosecution as being part of the benefit to the victim’s family. The victim’s family will demand a prosecution and therefore that’s why we do it. . . .

Maybe it’s about the family having an opportunity to say: ‘If we’re going to get X, Y, and Z out of this and the health and safety is going to be of benefit to other people and it’s going to cost them more than it would have cost them for a fine, then we’re happy for an enforceable undertaking.’ Maybe it’s getting the family involved.

One of the problems is that a prosecution takes so much money to defend it, particularly if it is a really significant one. It might be in those circumstances that the employer has to plead guilty. . . . The family would be unlikely to accept an enforceable undertaking based on the
employer not pleading guilty. So it might be that [1] the employer has to plead guilty, [2] the family have to be happy about it, and [3] the enforceable undertaking is about improving safety in the area which led to the fatality. . . .

So you think [the OHS agency] would hear a family who said we would prefer to have an enforceable undertaking?

I don’t know. But I think that’s the only way it could convince them. If it were an alternative to prosecution, it would only be if the family were happy for that approach. And potentially the union as well - because the union are likely to say, ‘You’ve pressured the family into this, and it’s not really what they want. You’ve asked them this because they want the questions answered. In two years time, their issue will be not that they don’t know the answers, but the fact that the employer wasn’t prosecuted.’ It’s likely to be the counter-balance of that.

TO8 | ‘That just doesn’t seem to be fair justice’

I’m interested also in, when they are prosecuted, the standard sentence is a fine. Is there any reason why that’s the only sanction?

For a corporation, it can only be a fine because there is no individual to put in jail. The Victorian law has the provision of reckless endangerment. So if an individual, through their acts or omissions, has recklessly endangered [an employee], then there is a jail term. But that’s the only circumstance. . . . There is the ability for them to go down the Crimes Act as well. But that would be quite rare. You’d have to be able to identify that there is an individual who has that level of culpability, and not that the organisation had that the culpability. That tends to be easier when the managing director is working on the shop floor with the other employees. Once you get into the big picture stuff, [it become much harder].

That is the argument for industrial manslaughter legislation. But what we don’t like about the concept of industrial manslaughter legislation (the way it was proposed in states where it was looked at – and the ACT has it), is that some poor person at the top of the tree is held personally accountable for all the failings that happened all over the organisation. That person can end up in jail because somebody five levels removed did something stupid. That just doesn’t seem to be fair justice. That’s about finding someone to put in jail, rather than really looking at what the true causes for the incident were.

TO9 | ‘The fines should be going into safety improvements’

One question that some families have raised is why the fine just goes into the state coffers, rather than to a victim fund?

I suppose that’s one of the arguments for enforceable undertakings. The fines do just go into the state coffers. That doesn’t make sense. They should at least be going into some process of safety improvements, which is what enforceable undertakings do. But maybe it should go into the Victims of Crimes Act. Under Victorian legislation . . . the Victims of Crime legislation cuts in once there is a successful prosecution. That can become another issue about why prosecution is important. . . . Maybe there should be a greater fund that can be accessed in relation to a death.
There is a recommendation in the Hanks Report in Victoria at the moment to increase the compensation for death, because it was significantly lower than compensation for somebody who was permanently incapacitated. But that’s a long way from going anywhere.

**TO10 | ‘Prosecutions should be based on the breach, not the outcome’**

Another issue that was raised is that the fine is for a breach of health and safety rather than the death itself, which causes all sorts of misunderstanding and confusion in the minds of the family.

That’s right, because the breach could be relatively minor. The outcome was the death, but the breach was minor. But at the same time it could be the other way: it was a significant breach; there wasn’t even an incident; but there should still be a prosecution. We certainly believe that a prosecution should be based on the breach, not on the outcome.

*Why is that?*

By saying that it should only be on the breach, then if a minor breach resulted in a fatality, the outcome would be a matter of luck, or poor luck. The employer shouldn’t get really heavy fines for a minor breach that resulted in a fatality, because their breach was small. But at the same time, arguing on the other perspective, if employees have been put at risk of a serious injury or a fatality and just by luck they weren’t killed, well, the employer should carry the full weight of the law. They shouldn’t get off the hook just because no one died in this particular circumstance.

If you put somebody up on a three-storey building and don’t give them full protection and the roof’s got an angle like that, and they’re spotted by an inspector, well, that person could have died. Therefore the penalty should be about the level of the breach, not about the outcome. That is one of the really big issues that the regulators deal with. There is this relatively small fine when there has been a fatality, because really in the overall scheme of things it was only a minor breach. It was just that all the circumstances came together at the one time and it resulted in a fatality.

It’s probably the symbolism of what is said in the prosecution which is upsetting I think – in that they are not actually prosecuted for the death, but for the breach.

But if somebody was killed on the road because you were drink-driving, you’d be prosecuted for drink-driving and causing death. But if you are unlucky enough to kill someone on the road because they ran in front of you when you didn’t put your brakes on quickly enough, you’re not going to be prosecuted – even though the person’s dead. So even in the road laws, you’ve got that variation. In both circumstances the person’s been killed by a car, but they are so far apart.

I don’t think we’d ever argue in road laws that, if you’re unlucky enough to kill somebody because they ran in front of you when you’re driving through a green light, that you should be prosecuted to the same length of the law just because the outcome was a death. Now that’s easy for me to say because I’m not the one who’s lost a family member, but that’s the context that’s got to be looked at.

It does make sense from a legal point of view. I guess that’s where something like restorative justice might fill in the gap in terms of some kind of acknowledgement that the death occurred. You can sit through a court case and it is rarely mentioned, because all the focus is
on the breach, what is actually being prosecuted. So the family don’t get the sense that, you know: someone died here.

Was my brother really there at all?

Yeah, exactly. So there’s obviously a gap from a symbolic point of view. If the concern is to prosecute in order to meet the needs of the victim, or the bereaved family, that’s one need that’s not being met through prosecution. So how do we address that aspect?

I don’t think you can, unless it’s by saying: just because it’s a fatality doesn’t necessarily mean that we’re going to focus on a prosecution. We need to look at other options instead. It’s much better to have a good enforceable undertaking restorative justice outcome, than a small fine or to have the family sit through a court case where their family member hasn’t even been mentioned.

But that’s a huge change of thinking – not just for the families involved, but for the unions, which are obviously the opposite side of the debate whenever we’re talking about reviews like this. We’ve got a set of views; the unions’ got a set of views. A lot of them are the same, and then there’s a few that are different. I know the majority of people in the workplace are no longer represented by the union. But as a representative body they have a very strong influence over the regulators and over the legislator. I think it would be very hard to convince them that anything other than a prosecution, when there was a fatality, was appropriate.

So it would have to be a prosecution plus, rather than . . . ?

Well, from their perspective. But that’s not necessarily – and particularly where we’re talking about a minor breach that leads to a fatality, then maybe having another option is important. . . .

Within a worksite, traffic management is such a big issue. You could have a site that’s paid absolutely no attention to traffic management. They’ve got forklifts and trucks and all sorts of things, and someone gets killed. Or you could have an employer who’s got a fantastic traffic management system in place: they monitor it; they enforce it. But there’s a new truck driver who’s come in that day. Somehow he’s got through the processes. He hasn’t been inducted. He’s driven onto the site and killed somebody. You can’t say it’s the same level of breach requiring the same level of penalty. Because that goes from somebody who’s paying absolutely no attention to traffic management, to somebody who had a good system but there was just a hole in it that somebody got through. The penalty can’t be the same.

The analogy with driving is interesting - because if there has been a prosecution for ‘drunk-driving leading to death’, the death is included within the charge. Yet in the workplace, you don’t have a ‘breach leading to death’. A case like that would be a perfect example of it, where it wasn’t a minor breach, it was an obvious case.

But both of them would be leading to death.

They would. But I guess, if you carried the road analogy, the idea of driving with a small omission and you just accidently ran someone over, that wouldn’t be charged as careless driving leaving to death.

No it wouldn’t be a charge at all, if it wasn’t careless driving.
There must be a way of linking really bad breaches to death as an outcome.

That’s where in the national OHS review, the recommendations talk about that category one breach, which is ‘exposing someone to serious harm’. But going back to the traffic management example, both have exposed someone to serious harm, obviously. But one was with no regard at all to addressing the issue, and the other was: ‘We did 99% of things, but we missed 1% and unfortunately that 1% coincided with this person walking across the driveway’. Both of them were exposing somebody to serious harm, but I don’t think you could ever say that those two breaches should attract the same level of penalty.

No, but I guess what seems strange is that if we can make these distinctions, then surely the legal profession can make them as well – that some cases clearly are far more culpable than others, so that the linkage with the death is warranted. . . .

TO11 | ‘The concept of restorative justice has a lot of merit’

In having a look at what Braithwaite has had to say, what were people thinking about his approach? I think he used the enforceable undertaking idea.

I think the concept of restorative justice has a lot of merit. I just think the practical application of how you make it work in the corporate environment is just particularly difficult. I don’t think you’d get anyone – or maybe some real red-necks – I don’t think you’d get anyone saying that restorative justice wasn’t a good concept.

It’s about how you do it in the corporate world where, unlike other crimes, it’s not a black and white crime. If someone’s been murdered, it’s a black and white crime. But if someone’s died at work, it’s not black and white. There are so many factors about what occurred.

Then there is the issue of the legal process.

So that presumably would require some legislative change?

I don’t know that it would. Maybe in states that don’t yet have enforceable undertakings. But if we looked at the national review process and said, well by December 2011 we’ll have effectively the same legislation across all jurisdictions, I would think that as long as you had the ability for enforceable undertakings, you could build in restorative justice as part of that. But there would probably be value in getting that issue into the mix.

So I expect the next stage after the second report coming out (which would be in the next few days) that there will be some process that the government or the Work-place Relations Ministers Council then go through about: What do we do next and how do we build this into the next stages. So there might be an opportunity then for you to raise the issue of restorative justice being one of the things considered in the enforceable undertaking area.
5. Unions

TP1 | ‘It’s hard not to be cynical’

I can understand people feeling that there has to be other ways, but it’s hard not to be cynical.

Who benefits from this stuff? Is it a victim driven approach that says: ‘Courts are a crock. We want – whatever it is’. I don’t really get a sense that that’s where it’s driven from.

My cynical view is that ‘saying sorry’ is what lawyers and PR people now tell people to do: ‘Don’t go on the TV. Don’t say, oh well, or whatever. Go and say we’re really truly sorry. But without admitting guilt.’ That seems to be the latest corporate tool. The sooner you come out and apologise the better. And people are enormously forgiving. But who does that suit?

I think apologising and all those things have to happen. They are still very important. But we have to make sure that it’s not done to get them off the hook. Or about trying to minimise what could be massive payouts.

So again, who does it suit?

TP2 | ‘Just so they can live with themselves’

It seems like [restorative justice] should happen, in a way. But also it’s so challenging.

So I wondered: if you could get those things that the victim wants – to be treated with dignity, to let them be the one who decide things – then do you need this other bit? Where the guilty meet with them just so they can live with themselves.

TP3 | ‘He’s not the decision maker’

[For large corporations, restorative justice seems to assume that there are a number of individuals who could be identified as having contributed, including possibly the health and safety officer, other employees on the site, the maintenance manager, the director, and so on.] But we’d look at it and say: the health and safety officer’s got nothing to do with it, in the end, because he’s not the decision maker. It may be a hypothetical [possibility that the OH&S officer steps forward and takes responsibility]. But it’s just not legal, because the duties under the OH&S Act are actually non-delegable.

TP4 | ‘The bit that I think is missing: class’

[You might say that people who didn’t do anything to stop the accident from happening are ‘partly responsible’. But that would mean that] every worker who sat there and said: ‘If I speak up I’m going to lose my job’, [would need to be involved] in the [restorative justice] process.
I don’t think that that is helpful. I don’t think it’s practical. And I actually don’t think it’s realistic. We’re not talking about equal players in a workplace. That’s the bit that I think is missing: class. . . . It really is about [people with] power and money making decisions or non-decisions that lead to these tragic outcomes. To say that those people have the same responsibility as the person who says ‘I’ll keep my head down, otherwise I’m going to lose my job’, I don’t think that’s fair.

You have to have a filter which is about power.

**TP5 | ‘They only change the behaviour of that individual’**

We’ve often said it here: If we could take that remorse and that wake-up call when something terrible happens and they come out and say: ‘I never want this to happen to anyone ever again’ - if [only] we could get them to think like that before they did it.

It’s an awful thing to say that it’s only those tragedies that change behaviour. For the most part, they only change the behaviour of that individual. It’s not a learning that goes beyond that.
TQ1 | ‘If you don’t investigate . . .’

[I know of a work-related death in which the OHS agency] made a very clear decision, early on, that they would not investigate this fatality. . . . [They] have an absolute discretion not to investigate. If you don’t investigate [a work-related death], who do you draw into a restorative justice program? . . .

I got a 2006 report on Comcare: There were 19 employees of the federal government killed at work. One prosecution. So in a restorative justice sense, how do you get someone up to the mark when no one is prepared to say, ‘We think you are as close to guilty as a conviction might make you.’ They will walk away. None of them take responsibility. . . .

TQ2 | ‘You won’t get the CEO.’

For those companies that are prosecuted, would there be a prospect there for restorative justice?

But who do you get at the table in a restorative justice sense? You’d get some PR person, or a consultant. You wouldn’t know whether they are an employee of the company or not. They get a nice, soft mild mannered person. They get briefed about a particular task to perform. It might be to front up to the family. You won’t get the managing director there. You won’t get the CEO.

Why do you think they wouldn’t come? They’ve been prosecuted . . .

Well, it’s not the CEO who gets prosecuted. It’d be the company. So the company would decide who it was that represents the company. They would claim some right to do that. They generally accept it as a right in this country that you can choose who will represent you at any time. So they might, if it was a Jewish family who were victims for instance, they might engage someone of that faith to represent the company for that purpose. Get paid and walk away.

So they wouldn’t even think of pulling together to ask: Who was actually there at the incident? Who had some part in what happened?

No. Not in the building industry.

Why is that?

Well, their capacity to shift and transfer people out of the jurisdiction, for a start, has been one method they’ve used to deny the courts the truth of what occurred. You know: ‘Oh we’ve got a job in Indonesia and he’s busy up there.’ So the capacity to drag him out or even interview him is lost. There have been numerous people who’ve been shifted overseas to escape the jurisdiction of the investigator. It’s just too easy.
TQ3 | ‘They would have to have deep commitment to humanity’

Do you think anyone would step forward voluntarily, if they felt personally involved in what happened?

Oh, well, look I think there are good people. But all the advice they would get would be to the contrary. They would have to have deep commitment to humanity itself to fulfil that. But as I said, it would be against all the advice they got. It would be regarded as contrary to their economic interest.

Even if it’s a private meeting, with no legal representatives there?

I don’t know. We really are getting down to the 1 or 2% of people who care. There’s so much other advice. No one stands alone in this world. Family, friends and other advisors would overwhelmingly suggest that wisdom be that they made themselves scarce rather than available. The corporate veil just provides a reason not to flee the country, but doesn’t exclude them from doing so. They often do both.

TQ4 | ‘They would do anything but be identified as criminal’

So is it driven by the fear of repercussions from a legal or financial point of view, or is it driven by the fear or the shame that they caused a death?

Yes: Identification. As a criminal colony, I suppose there’s a view that you’re either one class or the other. They would do anything but be identified with that class of people regarded as criminal. The killing of another person, wherever you sit in society, is not regarded as a credit.

Compensation for many is the grease on the wheel, even when it’s reluctant or criticised. Some of the loudest critics of compensation have been those who caused the reasons for it to be met. Someone got something that [didn’t]. They become judges of their own actions. They consider not so much what they did, but what others consider that they did. The jail is full of people who still deny that they were involved, at least to the extent that the court found them to be. That’s no different in civil society. That’s not a response that’s confined to our penal institutions.

TQ5 | ‘How many are prepared to acknowledge their offence?’

How would you appeal to someone’s humanity in such a situation? What would you say to them? You’ve known the victims’ families, and the value to them of getting answers to questions. So if you had a chance to talk to an employer or workmates, what would you say to them to appeal to their humanity?

I wouldn’t know where to start to be honest with you. I think it’s probably rooted in the criminal system itself. If it was much more of a practice in the criminal code, observers, free men could observe the benefits. They are just unlikely to stand in the shoes of the victim. Denial comes too easily.
However, when people are faced with options about terms of imprisonment or size of the penalty, they may be persuaded by those issues to come forward and express some genuine remorse. Some of those who spent a long time hearing those matters might have a much better idea than I. I don’t know what percentage of people, for instance, are prepared to acknowledge their offence.

The courts give some credence to people who do and the ones that appear to be reported are those who remain in denial at sentencing. That seems to be widely reported, probably more so than those that have been prepared to acknowledge their intent or at least the facts. But that’s the group you work with.

I think that’s where a system of restorative justice is rooted, in knowing what the percentages of people who do acknowledge their offence. How much of that is affected by the process, I don’t know. But clearly if someone’s been bashed after they were arrested, or mistreated while they were in remand, they might be less likely to – they might just harden up. There are many things that can influence the capability of people to – just to sit down and talk to someone across the table, victim or otherwise.

TQ6 | ‘Lift the corporate veil’ and ‘share the grief’

One suggestion that’s been made is that if restorative justice was an alternative to prosecution, you might get more up-take. People would choose. In cases you mentioned where investigations haven’t been held, and no prosecutions have been threatened, it’s hard to see motivation for why people would come forward. But if it was offered an alternative, if they came forward then there wouldn’t be a prosecution. Obviously there would be mixed motives involved, but what would be your view of that?

On the one hand, it’s easy to say sorry. On the other hand, we’ve just seen a prime minister who was unable to say sorry for 12 years. So it’s not an easy call. I think there are some matters where you could take that approach, and not proceed against the individual. This corporate veil thing is too convenient.

If there was a default position, if the corporate veil disappeared, and the directors were personally accountable, that would be effective. It would in effect replace the corporate veil. I’m not saying that on a common law basis, like one to one. I think if it was generally perceived so that people knew the rules well beforehand, that in the event of a serious incident, if you want to protect your own assets, your own economy, you had the option of fronting up personally or allowing the corporation to take the full brunt of it, that’s where I think you might see some traction with a restorative justice approach.

The down-side is that you wouldn’t get the public interest aspect of it. It would just be informal. But the victims may get far more out of it. They’d get answers to questions . . .

Yes, because the company is still there. They want to hold on to that. You might then get someone like the managing director fronting up, and not just a well-rehearsed script or a substitute. You might actually get a lot more tangible support for the victim’s family from that circumstance. If they lift the corporate veil, they’re in the gun. If they front up, then they have something to draw upon to provide some tangible support for their sharing of the grief. I think that’s what it comes down to. If you’re prepared to sit down with victims then you share their grief. You can’t leave the room without doing that.
I suppose it’s designed not just for the victims, but for people who genuinely care and are ashamed about what’s happened, and want to talk it through to say that they share that grief. There may not be many, but there will be some people like that.

Well, time hardens things up you know. The scar tissue tends to be a lot harder than the rest of it. But I think that’s right, yes.

**TQ7 | ‘We’d be very supportive of it’**

*How do you think the union would feel about that sort of approach?*

Oh, I think it would be entirely positive.

*Even if it meant that a prosecution was avoided?*

Yes, where a director is being investigated for prosecution as a corporate officer.

*Because the victims would be getting more from it?*

Yes, because at the moment penalties just goes into Consolidated Revenue. If any of the major companies took an active interest in the future of the workers’ children and those sorts of things, we’d be very supportive of it. . . .

**TQ8 | ‘The corporate sector would be absolutely opposed’**

It would require the consent of the Business Council for government to have the intestinal fortitude to proceed with a concept that traded off the protections of a corporate veil - the imputation of offence from the individual to the corporation - and therefore allow a person, a real person to come forward. . . .

But you’d need to understand that the corporate sector would be absolutely opposed. It’s black and white to them. There’s a corporate veil and that’s what it’s for. It’s to avoid personal responsibility.

The vast majority of employers in the building industry are labour only structures which distribute their profit each year and have no tangible assets. The advice they get when they are being investigated in these circumstances is to wind-up their affairs, put the ‘company’ through the shredder, and purchase another corporate shell for about $1000. The directors of the first ‘company’ become the directors of the second ‘company’, and the previous employer ceases to exist. That’s how the system works. Imagine if Carl Williams could change his name and cease to exist, start a new life as a re-born person, as regularly as he liked. The system wouldn’t work. We say the system doesn’t work when the corporate shroud is used in the same way.

There are some in the corporate sector who would help to draw the line, [to decide] where the line gets drawn. . . . It would require some sections of industry to be involved I would have thought. . . .

On rare occasions you see the family or the kin of a major corporate figurehead fall victim as well, as easily as everyone else. Their response is they bail. So they don’t remain in a position
of influence. Their own personal grief removes them from the process. So you can’t rely on, or shouldn’t rely on the personal grief of senior leaders in industry to move this issue on.

The wall of corporate interest is as hard and solid as the bluestone at Pentridge. It’s very hard. Very hard men. Their advocates - that you see in the media and in the courts - are very hard men. They know the system is solid. It’s important to them at least that it remains solid. It’s their watch. If they saw any softening in it, they would take it personally. So those people who are leaders of the bar council and all those sorts of organisations, they are very much front-liners around this issue. They make their money out of this issue: protecting the corporate veil. That’s where their bonuses and their very fast red cars come from.
6. Coronial Services

TR1 | ‘Distinction between RJ and therapeutic jurisprudence’

A. I would start by drawing a distinction between restorative justice and therapeutic jurisprudence. I’ve always read them as two different things.

To my mind restorative justice is about the sort of work that is done in the children’s court and in the children’s’ Koori court. . . . When a young person commits an offence they create a harm as a result of their actions. . . . Restorative justice is basically about restoring the community, restoring the society that’s been harmed by the actions of the young person. So you take a much more holistic approach. When that young person comes into the court, you talk to them in that context: ‘A harm or a wrong has been done and it has impacted on these people. Do you understand it? What are you going to do about it? You’ve acted in this way, you’ve created harm and now you need to restore the balance. You need to restore the community to its previous harmony.’

I suppose in the context of industrial deaths you might draw that comparison: the actions or non-actions of an employer have created a harm comparable to a harm in a criminal context. So one might say to the employer: ‘You’ve created a harm. How are you going to restore the balance?’ But there is a difficulty in our jurisdiction. Unlike a criminal court, we are not making findings about who has done a wrong. So in a way, restorative justice feels to me like it shouldn’t be here. It should be in the criminal context.

So that’s the restorative justice that I understand. I know there are huge grey areas, but I’m being intentionally very black and white about it, just to give us a way of talking about it.

Therapeutic jurisprudence (as I understand it) has a different aim to restorative justice. It’s about using the very processes of the court itself as a therapeutic process, rather than aiming at the outcome of ‘restoring the harm’. It’s about feeling like the process itself has assisted a person affected by (in our jurisdiction) a death, to actually get some sense of comfort. (People use the language of ‘closure’ in our jurisdiction, but I would rather use the word ‘comfort’.) We hope they are comforted by the knowledge that an independent process has scrutinised and reported on what happened; and that this may assist in the prevention of preventable deaths, as well as describing what happened to a family or person affected by the death.

TR2 | Families need to feel that something positive has come out of it

A. Families report to us that [the inquest] can be a therapeutic process for them. They have felt like . . . somebody independent has had a look and said ‘Look this is what I think has happened and this is what shouldn’t happen anymore. So I’m going to make these recommendations about what shouldn’t happen.’

So in a way, I think our process has that kind of therapeutic jurisprudence heart in it. Our new Act, which is going to be operational on the 1st of November 2009, is a much stronger legislative basis for exactly that to happen. And the reason I say that is because, for the first time in the history of the coronial jurisdiction in Victoria, the preamble to the Act will actually say that a major reason for existing is to assist in the prevention of preventable
deaths; and that part of the purposes of the jurisdiction and all of us working in it, is in fact to investigate deaths to see whether or not there are public health and safety messages or issues touching upon the administration of justice (‘messages’ is not in the Act, I’m just using that language to say that that’s the way it will feel to the public).

Now I think, knowing what I know about therapeutic jurisprudence, and what the families report to us about how that makes them feel better, is that the very structure of the jurisdiction itself has, now in its next life, an incredibly powerful potential for people to feel like, at the end of it . . . there hasn’t been a completely wasted life – in the way in which people talk about that regularly.

Leaving to one side our jurisdiction, you think back to something like the Port Arthur massacre. Walter Mikac, who lost his wife and two daughters, started up the Alannah and Madeline foundation and I think that was a way of him trying to find a way through for himself. There’s an example.

I listened to a chap this morning talking about the loss of his son . . . in the wake of the carnage on the roads on the weekend. . . . He’s clearly feeling comforted about being able to hope that something positive will come out of the loss of his son. I’m sure that’s why many people are going off to the Royal Commission. Some bushfire victims go there, with their heartbreaking stories, hoping that something positive will come of their tragedy and to bear public witness to what happened.

[Again] you will recall that recently there was the young woman . . . who died as a result of her melanoma, her skin cancer. She campaigned in her dying days for the recommendations about the regulation of the sun bed industry in Victoria. Her mother reports that she gets real comfort from what she sees as something positive coming out of her daughter’s death.

These are but a few examples.

**TR3 | The State Coroner’s Assistance Unit’s role**

A. The State Coroner’s Assistance Unit [SCAU] are the police members who are permanently stationed here. They do most of our in-court work. So it’s [their] staff that run most of the inquests in front of the Coroner. They are the ones who are talking with the families about the issues of concern to them before the court process starts. [They ask the family questions like:] ‘What would you like to draw to the attention of the coroner?’ . . .

[So they] are often the kind of liaison between the families and [the Coroner]. [Their] staff will be receiving calls from the family saying: ‘Is the Coroner going to do this and is the Coroner going to do that.’ And [they’ll] be reporting to [the Coroner]: ‘These are the issues that the family are concerned about.’ And [they] reassure the family that they can raise these issues in front of the Coroner. [They will say to the family]: ‘Have you got any more questions?’ ‘Is there anything else?’ [They can even assist] the family sometimes to formulate their questions.

Again, I’ve seen this work well in this jurisdiction. We’re talking about unrepresented families. But sometimes even when families are represented, the [SCAU staff] will be, fairly constantly, contacted by families and be the conduit back to us, so that we can understand the families’ concerns and endeavour to address those in the course of our enquiry.
TR4 |  ‘We personalise the experience for families as best we can’

A. Also I think we’ve done simple – or what seem to me to be fairly simple things – but important things. [For example, we make] sure that we refer to the deceased by their names. We personalise the experience for families as best we can, so that we actually include them at the beginning. We say: ‘I know that the senior sergeant has had a conversation with you already about how you want your son referred to, and I understand you want him referred to as ‘John’ rather than ‘Mr Smith’, so that’s what we’re going to do, ‘Is that right?’ And they will say ‘Yes’ or ‘No’ or have some other response. And so then we’ll say to the bar table: ‘So you’ve heard that everybody. Any reference that you make to John is to be done in exactly those terms please.’

They are small things, endeavouring to ensure people their loved ones are not just another number in this jurisdiction or a case file, instead of a valued human being.

Even in the course of our findings, we’re all talking with each other and [agreeing that we need to say] something a little bit personal about whoever it is, rather than ‘The deceased was driving his vehicle in a northerly direction on the Eastbound carriageway at 8.20 pm on Saturday night, when he had a head-on collision with someone driving the other way’. I think we are much more mindful of saying maybe a paragraph or two as an introduction talking about ‘John being the much-loved son of his family.’

I have observed that before that this is a little bit like the last official word on this human being who has lived and walked this earth. This is the last official record of their life. It’s not a eulogy. That’s not what we’re doing. But I don’t think it detracts from any part of our work to put in just something that humanises this person a little bit for anyone who comes along and reads it afterwards, without crossing the border into an apparent lack of impartiality. We’re working on those things. Most of what I see from my colleagues really demonstrates that they take that into account when appropriate . . . .

My impression . . . is that that’s having an impact in the reduction in the number of complaints and the nature of those complaints. Just the attention to detail. People get really upset - for reasons which I absolutely understand - if their loved one’s name is spelt incorrectly or if the place of death is wrong. So we’re being as careful as we can, but it takes a lot more time to check all of these details thoroughly. Sometimes we’ll go back and ask the family to check that we’ve got correct spellings before we put our official record out there. We haven’t found a family yet that has been unhappy about that checking being done.

Sometimes they don’t agree on the spelling amongst the family members. Sometimes they don’t agree on lots of things, including ‘I don’t want you to talk to my sister about this’. That happens a lot. Much more than you would imagine. Or: ‘Don’t give my father this information. He didn’t care about my mother when she was alive.’ It’s sometimes hard, behind the scenes, because it’s not always united families. But we’ve got to manage that as best we can. What we usually do is just say to the families that: ‘The Coroner’s not going to engage in the family feud. We’re just going to play with a straight bat. We’re not going to distinguish between brothers and sisters. The information will go to any family member who requires it. You’ve got to sort those things out yourself.’
TR5 | ‘They actually felt he had genuine remorse’

Have you even witnessed employers apologising to the families in the context of an inquest?

A. I don’t know about industrial deaths, since they tend not to get in the witness box at the moment. But sometimes there will be an acknowledgement in the hospital-style deaths, which is a potentially comparative model. The legal counsel for the hospitals will express regret to the families for what happened. They express an acknowledgement that this was a shocking thing, but with no admissions of liability. [They] just get up there and say it was a terrible, terrible thing. I don’t know whether families are comforted to hear that.

B. The best example [I know of was where] one of the doctors did not do something; and if he had done, it this woman would more than likely have lived. This more or less came out in the evidence. He was asked: ‘If you had done this, would she have lived?’ and he said: ‘Yes’.

Now the families at first they were a bit: ‘Ok that’s it. We want blood.’ But when I explained to them and said: ‘That is just amazing, that you’re getting someone to admit that. He didn’t have to do that. He didn’t have to go [into the box]. He could have actually denied all knowledge, and you would never know. He’s actually said something that you didn’t know about and admitted [it]. It wasn’t negligence as such.’ They actually took something from that. They actually felt he had genuine remorse; and they did actually in the end feel sorry for him. . . .They really drew some comfort from that, definitely.

Sometimes I think it’s the timing of it. We’re talking about after the inquest. This can be two, three, four years down the track and the families are [only then] getting a ‘sorry’. I don’t know if they’re going to take that as genuine.

A. Although if it’s as opposed to never, it’s still something.

B. For some people it might be ok, but it’s a hard one.

TR6 | ‘They feel like it’s vindication’

I was just thinking of another case. One of my colleagues told me about this one. A doctor got into the witness box and said: ‘Look what can I say, it was too little too late.’ She put that into her finding. She said it was absolutely right. That evidence was completely accurate and consistent with what she could see: too little, too late. She said that he looked absolutely devastated when he said it. He looked pained, distressed, under pressure, but honest. That I think has a positive impact on a family. They feel like they’re not going mad. They feel like it’s vindication for the position that they’ve maintained all the way through.

If, at the end of the process, the Coroner makes recommendations about changes that should happen in hospitals as a result of what’s happened here, that the family says: ‘Well at least no one else will have to go through what we go through.’ You know how you hear that, like a mantra, over and over again in the community. . . . But they were comforted to think that something positive came from it.

That’s the other thing you know, three years down the track they’ve come to terms with the death. If it was three months down the track they’d be much angrier. It just wouldn’t be enough. But three years down, they’ve worked through a whole lot of the periods of grief that the experts tell us are the way in which the process goes.

You’re still waiting for something. You don’t know what it is. But at least somebody’s telling the truth about what happened. That’s big, you know. The truth is coming out. Even if
nobody at the end stands up and says (like in Perry Mason): ‘I did it and I’m sorry’ – just that process itself, I think, works some powerful therapy. That’s what we are told. I actually think that’s right. I’ve been in practice myself. I’ve seen people say, ‘Well we don’t like it. We wished that something else would have happened. But at least the truth has come out.’

Sometimes people think that the truth hasn’t come out. [And] sometimes the whole truth doesn’t come out because the evidence can’t be got, you know. You just can’t get there. Now our new Act is going to give us a bit more strength to our arm. I guess one of the things you probably need to understand in your context is that, after the 1st of November 2009, in the new Coroner’s Act, we, for the first time, are going to have the capacity to force somebody into the witness box to answer questions, even in circumstances where to do so may tend to incriminate them in an indictable offence.

Now at this moment, the law gives you the right to remain silent. You can’t be forced to say anything, if to say something may expose you to a prosecution for an indictable criminal offence. That will change in this jurisdiction after the 1st of November.

I can just think of a couple of inquests in the last six months where employers have said, ‘I’m not saying anything. I’m going to exercise my right to remain silent’. The Coroners have had to rule on the law and say: ‘Yes, it’s a very broad privilege; and yes in these circumstances you may expose yourself to a criminal prosecution. So I’m going to grant you the privilege.’ That will go. The process will be quite complex, but at least possible. So that’s big in this jurisdiction.

We wouldn’t normally proceed before the criminal prosecution. So in the event that there’s a criminal prosecution for an industrial death, we won’t be going before that criminal prosecution has been exhausted. So in other words: trial – verdict – penalty - appeal. That can be very long. That’s one reason we get so far down the track sometimes. . . . I’m not suggesting for a moment that we haven’t got our own delays. But in these sorts of cases we would have to wait. So if there’s an appeal pending from a finding or a sentence we would just wait, and wait. There are a whole range of reasons as to why. That’s not going to change. In particular, they will be highly sensitive to us going before any criminal prosecution. If we’re going to be forcing [the witness box] on somebody in circumstances where they would get the privilege in any criminal prosecution, we couldn’t go before a criminal prosecution.

So if they are found not guilty in a criminal prosecution but they come before you and are clearly -

And out pops something?

What happens?

Well, if we’re going to force them on, then we’re required to give them a certificate of indemnity from any criminal prosecution or civil liability – except not from perjury. So if they perjured themselves in the witness box, then they’re not protected. But if they hopped into the witness box and said: ‘I did it’, they’ve got a certificate of indemnity.

I recall talking to my colleagues in the other jurisdictions about [potential problems that might arise. For example] what happens if you’ve got the journalist sitting there and you’ve
got this incredible scenario where someone says ‘Yes it was me’. Do you put a suppression order on it so the journalist cannot report it? My colleagues in the other jurisdictions say it has not presented a problem for them.

I know that NSW and WA for example have this system already that they can force on witnesses. So we’re actually playing catch-up here in Victoria. It would be interesting to ask the other states about whether or not families feel that, in this industrial death area, they get more out of it. That might be an interesting little bit of work to do.

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**TR8 | ‘We certainly could recommend that the parties participate’**

If a bereaved family expressed to you the wish to meet with an employer, and supposing there were a restorative justice service, would you be willing to...

B. To recommend or refer? Yes, definitely.  
A. Oh if the service existed? Yes, absolutely. To facilitate that, to have a structure for it to refer them to? Absolutely.

We certainly could recommend that the parties participate. We’ve got the power to make comments and recommendations, but we certainly couldn’t direct them. So if the employer says ‘I’m not going to a conference. The family were unreasonable. They’re not going to be satisfied by anything that we say,’ we cannot take that further.

B. Sometimes the families only want that acknowledgement and for the head of the company to show some sort of remorse. So they don’t need to have full-blown admissions: ‘I killed him’. So I suppose it’s a matter of assessing each case with the families, and assessing the family too.

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**TR9 | You could ‘offer to do a debrief with the family afterwards’**

A. In a way, I wonder if whether or not where you might get a toe-hold is perhaps in a debrief, if you called it a ‘debrief’ really, rather than a ‘conferencing model’. So, where we have inquests, you would come into this arena, sit through the inquest and then offer to do a debrief with the family afterwards, invite the employer to join in. That’s one possible model that might be of assistance. The family might get some comfort from someone just sitting down with them and going through it afterwards.

That’s the kind of thing that the SCAU does isn’t it?

B. Sometimes we have closer contact with the family soon after the death or when the inquest is starting to grow some legs and it looks like it’s going to happen. But quite often it’s not until very close to the inquest. So we’re talking 12 months, 18 months, 2 years down the track. A lot of issues have grown legs and festered. Sometimes it’s really hard then to try and convince someone or explain to someone why things happened because they’ve got the whole mentality: ‘It was a conspiracy. Everyone was trying to cover up. No one was trying to help us.’ So sometimes it’s really hard then to try and explain systems and procedures 2 years later is quite hard. But we tend to try and do that. Then when we get into court, we explain what’s going to happen.

So yes, at the end of it, we do a bit of a wrap up: ‘What does the Coroner mean by that? Where does this go? Who’s going to look at it? Does anything actually really happen?’
try to be really, really honest with them [by saying]: ‘Well, nothing specific is going to happen necessarily. But when they refer these matters on to the medical board, they do look at them.’ You try to explain what might happen, but not to get their hopes up [by saying]: ‘The world’s going to change’. You’ve got to get that balance. You really learn to assess what certain families are like, and read them, what they really want. Some don’t want anything. Some just want to get the hell out of there. Most do want some explanation. You normally have to sit down with them at the end of a finding for about half an hour . . . . 

So you’re thinking that there may be a role for restorative justice as a kind of quasi-debriefing where all the parties get together?

That’s one possibility. But again, we can’t force anybody into it. But if the service was there - I really don’t know. I mean they obviously want to hear from the police, and have respect for the position and authority that they hold. So I don’t know if they [would also want a more informal debriefing].

B. [Some families] might feel it’s ok for them to speak to the [employer] 2 years down the track. But for some of them, that’s just too late. It’s just too late. I think it’s quite difficult. I mean it would be fantastic . . . if the building industry were educated to take some care with these families earlier on, without admitting responsibility. But that’s a personal thing for people. . . . I mean it’s very difficult. Because they don’t know how the family is going to react. Some do get quite angry and aggressive.

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**TR10 | ‘What does he really think? I need to know.’**

B. The industrial deaths I’ve been involved in are so much more difficult because as soon as it happens, everyone shuts up. They won’t say a thing. They are scared.

A. Yes, most often everyone just ‘lawyers up’. They go off into their corners.

B. I think some of them genuinely do have remorse and some concerns. But they just don’t know how to handle it. They just don’t know what to do. So they shut up shop. . . .

A. You know the restorative justice program in the children’s’ court is very much simpler in this regard, because basically the prerequisite is a plea of guilty. So if, you plead guilty, then there’s no problem about going into the conference. You’ve entered your plea of guilty, so there is not issue about responsibility or liability.

They actually have something to gain from it. They are told ‘Mr Smith is standing here, Johnny, telling me that you’re really sorry about what happened. But there’s no point apologising to me. I’m not the one who got hurt by what you did. That’s Mr Brown and his family. They’re the ones who got hurt. If you’re prepared to sit down with them and explain what happened and show then that you’re sorry, that’s going to be really big for me when I come to decide about sentencing.’

So it’s a huge ‘carrot and stick’ persuading those young people to go off and do those conferences. We don’t have that here.

B. You’re also talking about the loss is someone that’s died.

A. There’s no restorative justice program for the murder, manslaughter, or culpable drive here. Although interestingly enough I believe New Zealand do it, certainly in their juvenile jurisdiction. I don’t know about their adult jurisdiction. They’ve reported some really very profound conferences. But again, it’s after the finding. They’ve either pleaded or been found guilty – usually it is pleading guilty. They see the offender sitting there sobbing his heart out.
saying: ‘I get nightmares every night. I can’t believe what’s happened.’ It’s something for the family, rather than just the stony silence of the court-room. [It’s an opportunity for those who are saying:] ‘What does he really think? I need to know.’

TR11 | ‘Industrial death is different territory.’

There was a lot of research in this area of restorative justice in the children’s court. There were families reporting back saying: ‘It was a great relief to actually be able to talk to a young person who burgled the house. We asked: ‘Why us? Why did you come to our house?’ And they say: ‘I was just walking by. That’s it. It was that simple’.

I remember a family who had their van torched by a couple of young boys. The family (victims) were in an organic green grocery business. They thought they were being targeted by the underworld. They truly believed that their van had been torched by some Footscray market underworld figure. Instead, these two 16 year old kids were walking past and thought it was funny or a good idea. (They couldn’t explain it really. They just did it). The kids were remorseful; but what was much more important [to the family] was to just understand what happened.

[Industrial death] is different territory. We’re doing our best [in the inquest] to find out what happened, rather than [leaving that up to] the employer. . . . [So] I just can’t imagine that [restorative justice is] going to change what the family are going to get.

TR12 | Restorative justice would depend upon a plea of guilty.

It’s a little bit too early to say really what the impact will be of that power to compel somebody to get into the witness box and give evidence. Is that going to make a difference? It’s too early to tell. . . . Might they feel more inclined [to admit responsibility] if they know that the Coroner might direct them into the witness box? Probably not, before the inquest, no. Because they’ll be worried that the family will then run off to [the SCAU] team and say: ‘This is what he said. Ask him about that. Get him on transcript.’ I just don’t know.

I think the ones that will be clearest [for restorative justice] is where there has been a criminal prosecution, and there’s been a plea of guilty. Easy. But maybe they won’t do that before we run through our process. And if they are found guilty, then we usually wouldn’t hold an inquest - unless there was something more that we thought we would find. There will have been a fairly complete investigation before it gets to us.

*So you’re saying there would have to be plea of guilty before people will agree to do RJ, because the legal risk is too great?*

I know what their lawyers are going to tell them. No lawyer, is likely to say any different to them, really - which is a shame, but understandable from the requirements of a lawyer’s duty to their client.
TR13 | ‘Can we just try and help you sort this out’

If there were complaints about the Coroner’s service that you thought were too delicate or complex to handle in the normal way, could they be handled by inviting an independent restorative justice facilitator to arrange a conference or meeting?

Oh, I think that is probably a real opportunity.

It’s interesting to look right behind us at the bushfires, and see what the State did in terms of putting case managers to every family. These were all the families affected by the fires, not just those affected by deaths, but by loss of property or even neighbours losing properties and the impact generally. I think there are something like 400 case managers out there from DHS who are doing exactly that sort of stuff, standing between the families and Telstra, and post offices, and estate agents and politicians (dare I say it) . . .

It would be interesting to follow up with some of those families as to whether or not they felt assisted by those case managers. You’ve got some evidence sitting right there, potentially, at your doorstep as to whether or not ultimately that experience of having a case manager, an advocate to ameliorate the worst impact at the worst time in your life. Was it a positive experience? If so why? What were the good parts about it? That might lay the groundwork for exactly what you’re talking about. . . .

What I was seeing when I arrived [at the Coroner’s Service], and still see sometimes, and certainly saw during the bushfire period, was complaints about ‘the system’. People were really angry with the Coroner because ‘the funeral director came and behaved in an inappropriate way’; or because ‘the police came to the scene and did something or nothing’. . . . [I]t might be an orderly in a hospital that’s done something; or the way in which somebody was transported here; or something incorrect was reported in the newspaper.

We are responsible for some of these issues. I am not being critical of the reasons why people complain at all. It is one big horrendous and traumatic experience. I am just saying that what the ambos did, what the funeral directors did, what the police did, what the hospital orderly did: becomes all enmeshed in our jurisdiction and it can be very difficult to talk to families about these issues without sounding defensive and like we are ‘buck passing’.

So if there were a service that offered to chase up these people and see if they’d be willing to come and apologise to the family for what’s happened, do you think that would be a useful thing to have?

I do. Yes, I do. Particularly in the wake of us becoming a court. At the moment, the Coroner is responsible for the delivery of the Coronial system in Victoria. . . . So we’ve just got to spend lots of time following up these complaints.

[it would be helpful] if there was a service which said, ‘Look perhaps if you can go off and see whether or not this matter can be resolved in this way.’ [Having said that] the police . . . will investigate any complaints made against them; and the health services commissioner exists to follow up on poor treatment at hospitals. But often what we’re getting is the broad brush stroke of what happened. So there may well be a space there to hop in and say: ‘Look can we just try and help you sort this out and get around the table perhaps, with the funeral director or with the CEO of the nursing home, and see if we can sort it out.’
7. Case Study of an RJ Process

This section includes the transcriptions of individuals who, in their interviews, reflected on their involvement in an actual RJ meeting. This meeting was arranged to address the hurtful way in which OHS advertising was used in the aftermath of the fatality. A person responsible for this harm met with the bereaved family, and the discussion was facilitated by a grief-support worker.

RJ1 | The Bereaved Family

A. It was an ad, using [the place and situation in which my husband died]. I was never informed. It was distributed on field days, wasn’t it, the pictures. . . . I just didn’t understand how they could be so thoughtless. Imagine if I was just walking along, and they were just handing them out. One of [my husband’s] mates rang up and gave them a good blast. That’s where it all started wasn’t it. He was just horrified that they did it. . . . It was a local field day. It was people that would have known. . . .

So they withdrew the ad. Did they contact you to say anything?

I think [my husband’s friend] first rang [the company that made the ad], and that started the ball rolling a bit from there. . . . Then [the grief support worker] got on to it, and we ended up having a meeting with [the person responsible for putting the ad out]. . . . I felt sorry for [him] because he is a nice bloke. He just did not know. And for us to be in his face, by the end of it, he actually – you could see that he was [moved] – yeah, it was good. It was one of the hardest things I’ve ever done, but having done it, I’m glad that we did it because it really did make him see that it was a really dumb thing to do.

B. I suppose it was putting that human element to it.

A. It’s really difficult, because I hated that man – that he could do that. Yet, once you meet him, he’s not such a bad bloke after all. But I hated him for doing it. And if he’d seen who rang him, he would have been scared out of his wits, wouldn’t he – because [my husband’s friend] looks like a bikie. He’s lucky he was only on the phone and not . . .

So what did he say to you?

He apologised. He was . . .

B. Very sincere. Really nice. You could see the impact it had. He understood.

How did you feel when he said that?

A. I went into that meeting thinking ‘I dislike this man’. Now I understand that he didn’t know what he was doing. And I’m sure that we made him understand that it was a big mistake to do it; and now they inform [the grief support worker] – they tell [the grief support worker] when there’s going to be new ads, a new lot of ads, and then [the grief support worker] tells everybody that there’s going to be a new set of ads on Telly or something. So that’s worked quite well.
B. It’s a bit hard for them. Because they’re trying to have that deterrent or whatever, and have that sensitivity. . . . but it’s very confronting. It’s like any of the car accident ones: It’s confronting for the families. It’s a very difficult area.

A. That actually reminds me of something else. . . . Someone else had had an accident . . . and it was probably about 12 months after [my husband’s] accident. [My sister] rang me up to say that there was a photo of [my husband] in the paper, in the local paper. Why? They had put his photo in the paper to emphasize accidents that happened, because there’d been [this accident]. But they hadn’t asked my permission to put this in. [My husband’s] mum read the paper. I was warned. I was lucky that [my sister] seen it, rang me up, said ‘Don’t get the paper’. . . . Like, that was dumb.

[The grief-support worker] set up a meeting with the editor [of the paper]. I still don’t think that he understood what he had done. He was very defensive. I think he thought we were going to sue him or something. I think that’s why he came in very . . . by the end of it I felt like he had, he realised that we just wanted him to understand that it was a very silly thing to do. But right from the start, he was really sitting up there. But that was such a dumb thing to do too.

**So did he apologise in the end?**

Yes, he apologised. But having said he apologised, they still put photos – because [my sister] brought up other times that they’d put photos of car accidents in the paper to emphasize this has happened and that’s happened. And she said, ‘You know the only people that you’re affecting are the people directly involved in that accident.’ Because I could even look at a car accident and say, ‘Looks like a bad accident.’ But if it was that family of that person, it would just all . . . the same as . . . yeah. I think that they’re trying to get that big impact, but it’s impacting on the wrong people.

**And that’s still happening?**

Yes. Well, in all papers it does. It’s not just the [name of the paper]. But I guess because it was a local paper, it was a local man, so I guess they thought ‘Good impact’, the whole thing. They hadn’t counted on the impact, on the other ways it would have on people.

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**RJ2 | A Person Responsible**

We are the safety regulators, so the sorts of incidents where people have died as a result of contact with electricity, gas, it’s our responsibility to investigate those. Some, we then investigate in association with [the OHS investigators] if the incidents occurred at work. Some incidents might occur at home, we’d be the lead investigators on that, perhaps in association with the police. The police are usually involved in those things.

In 2006, we had three deaths resulting from contact between trucks and overhead powerlines on farms. . . . We’ve had a few of these over the years, but to suddenly get three of them within a very short space for time caused us immediate concern. So we launched into a pretty heavy awareness campaign. That included making a new television commercial. We basically used what had happened as the guiding script for the production of this video. We also had photographs taken at the various scenes. So we had photos available to make posters and that sort of thing.
We went ahead with this, with all good intentions. Then [a grief support worker] phoned up. I had no idea who she was or what organisation she was representing. She came to see me and we thought, well it would be a good idea to actually have a meeting with the widows and their families to discuss our campaign. So they came to see us. They were pretty upset. So rather than trying to say, ‘Ok, listen we did have to do it, we did have to do something.’ Where we went wrong was actually not letting them know beforehand. When preparing the campaign, we didn’t know who they were. We didn’t have any agency with which to contact them. Now we do. So we apologised, number one: we apologised. Then we discussed things.

As it transpired, the families were distressed as much as anything else over the fact that they could only get very little information about what had happened. So we had a couple of meetings with both the families of the particular widows, where [our organisation’s] investigators who were either in charge of the investigation or who were on the spot shortly after the incidents actually talked to them about what happened and revealed as much as they could. Some stuff they couldn’t reveal because it was subject to coronal inquiries and that sort of thing. I think the widows and their families had been badly let down by the system in this state in that, in those incidents, they were three years ago, and there is still absolutely no sign whatsoever of any inquests.

They are never going to get closure until those inquests. One of them is a court case pending. In the end it is just this incredible delay in the coronial service, in the law, in the courts. You can tell that the families are just totally unable to move on, and they will be for a long time after everything has been settled and they are fully aware of what happened.

So we’ve tried to help them as much as possible. We see this as an important part of our role. We would have done better and done differently if we had known who they were. Subsequently, we’ve done more work with [the grief-support worker] and there was another family who had been totally mystified about the death of their son in an incident . . . . I have to say, we remain mystified too as to how that happened. But we went down to see them at their home, the family, and talked to the mother and father and also a couple of the sons, a couple of the brothers of the guy who died. So we were able to help as much as we could. I think by doing that approach, people appreciate it. What we have been able to tell them, we’ve told them. . . . I think we have filled the gap, but only temporarily until such time as the families are satisfied in law or in the courts or in the coroner’s courts.

We also let them know through [the grief-support worker] when a commercial is running again. But they had this one suggestion that we produce a DVD, and so we are actually in the process of almost finishing that now. And that does include some of the sort of emotion of the widows’ grief and the grieving process and how hard it is to move [forward] as part of that story without using their names. But it’s their words, even though . . . . one of them wasn’t quite happy with the words we used initially. We have now corrected that so that they are the words that she wants although it’s someone else delivering them and delivered in another name. And we hope to get that finished before the end of this year, and we can then have it ready for distribution and launch . . . . we don’t care how many thousands of this thing we produce or distribute because we thinks it’s worth it. It’s pretty important.¹

I suppose the fact that the Director [of our organisation] . . . . who I report to has embraced the idea of this project – because they’re not cheap to make – as much as because of the fact that the families recommended it rather than because I came up with the idea for the need to make a DVD. So I think that’s been pretty useful.

¹ This DVD is now available.
What were your reasons for going forward with the meeting with the families and what it felt like to do that?

It was just the right thing to do. They wanted to speak to us. You couldn’t say ‘no’. I didn’t think you could say ‘no’. I mean . . . it’s not something that you would necessarily look forward to. I had the support of my Human Resources colleague, who is female, and the only female at the highest level at the organisation, and not an engineer and not a lawyer. . . .

So we just sat there and listened, and apologised, and then we made our point as to why we thought we were doing it. . . . Without labouring the point, I think we did . . . We were right to do what we did when we did. We did it with the best of intentions, and I think they appreciated that. I suppose it was the way it happened. . . . No, I didn’t feel at any stage that you could say that you didn’t want to do it. You may not want to do it, but you have an obligation to do it.

How did it feel during the meeting itself?

Pretty tense at times. But having apologised, I think that set the tone. They were happy about that. At the end of it they were all quite pleased. And confident enough in our organisation that they could come back and ask for more information about the particular investigations into the death of their husbands. So they got the guys on site here to understand that that was the sort of thing we should do if we could to impart as much information as we can. That’s what we did. It’s really been - it’s all been good since then. . . .

If you had the chance to talk to someone in your shoes, and they wanted to know ‘why should I do this’, ‘what would I get out of this’, how would you . . . ?

Well, you don’t look at it from what you’re going to get out of it. It’s just about providing the families with what they need to know. I mean they’ve gone through a terrible thing. If you haven’t gone through that yourself – I fortunately haven’t – you perhaps find it hard to realise that people 2 or 3 years later are still grieving very, very, very heavily. And you’ve got to accept that, that’s pretty important. So it’s not what you get out of it yourself, it’s what you can provide. It’s a reasonable principle to apply. We’re not in the business of – we’re here for the community. Of course, they came up with the helpful idea of a DVD, and we’ll go with that.

Were there any concerns that you had before going into it, such as an admission of fault, the liability that might . . .

No, we did admit that we did do the wrong thing. We didn’t do the wrong thing by launching the campaign, making the commercial, showing the commercial. We didn’t do the wrong thing there. It’s just that we didn’t alert them to it. And that’s the message I suppose that if we do get something similar, where there is a need to start promoting things that might have a similar sort of circumstance, then obviously someone like [the grief-support worker] is the person who would be involved in any family as a result of this. She’s more than likely will be if they are work-related grief, in which case we can go through [the grief-support worker] and say just to let you know that we’re doing this.

Their initial shock was turning the TV on and seeing the commercial very much based on exactly what happened in their husbands’ situation. But we did it for that very reason because that’s how it really happened. So we’ve supplied the script for the DVD to [the grief-
support worker]. One of the widows didn’t like what we’d done so we’ve changed that. The other one was quite ok. It was done with their blessing really.

So that’s the kind of argument you could put forward to people who find themselves in your position of causing unintentional harm?

No intention. Very upset when we realised that we had upset people. So we set about putting it right. That seemed like the reasonable thing to do. Some people can run away or face up to doing the right thing. -

There are certain legal obligations placed on organisations such as ours when we go about our work, but that’s not an excuse to say nothing or do nothing. If it’s possible to do, then we’ll do it. We can only be a better organisation for it.

Subsequently [the grief-support worker] has come and spoken to all the sorts of guys, our guys, who might be involved in similar sorts of investigations. And we do have the [grief-support service’s] information here for them to pass on in such circumstances.

So there’s been a long-term result.

Relationship, yes, hopefully. . . . These are very traumatic things. . . .

What do you think about the idea of people who are more connected with employers say going through the kind of process that you went through but focussing on the actual fatality rather than as you did with . . . Do you think that would be a helpful process?

You mean the employers of the people who died or other employers generally?

Employers connected with the people who have died, meeting with the families.

Some of the problems are - relates to legal action. One of the [men] who died, his employers have been committed to stand trial. So there are problems there. . . .

Both widows have never heard from the [contractors] where the accidents happened. They could well have been advised by their lawyers not to, whereas they might well want to but have been advised not to. It makes it hard, the lawyers, they do get in the way on some reasonable things. But it might be good sound advice . . .

So generally yes, if you can, but if you’re advised not to on very good grounds legally, and there’s pending prosecutions . . . . If there was legal reasons why we couldn’t do what we’ve done when we did it, then we would have to not do it – the reality is that you couldn’t go against that.

Perhaps something that could be done after the legal process has completed?

Yeah, it depends on the outcomes I suppose. If the employers get heavily fined or are sent to prison, or the families are still not satisfied with what happened. Maybe [it’s] best for both - for all parties - is to try and move on without that, if it’s possible to. But if it’s possible for people to sit down and talk about it, it would be right.
If I was a [contractor] and someone died on my property, I really wouldn’t know where, in the restorative quest, to meet the family. You just wouldn’t know how they’re going to react. They might come with a shotgun or something. Especially if there’s particular anger. There’s often anger as well as distress.

If you knew it would be a safe meeting?

Oh if it was a safe meeting, yeah. When we did it, it wasn’t that, you know – it wasn’t something we thought about particularly for an awful long time to do. We thought, we need to do it, so we’ll do it. We had done the wrong thing, but we believed we were right in what we’d done. We just hadn’t consulted first of all, because we didn’t know who to consult.

Did you spend a lot of time thinking about what you were going to say before the meeting?

No. We were going to see what they wanted to tell us. But I thought it was pretty important. The Aborigines have been waiting for 200 years for an apology. They got one. There’s no point in waiting that long. You might as well, if you were in the wrong, well you get in. So we apologised for the distress we had caused . . . but not necessarily apologising for what we did. Because I’m sure they would have felt as we did that we didn’t want any more of these types of incidents. And that ongoing awareness of that issue is ongoing because we’re doing the DVD.

So you felt that they accepted that distinction?

I think so, yes. Oh they did. They didn’t think TV commercials were the answer, they thought the DVD was. We could disagree on that. I think more people are going to see the commercial than maybe the DVD. It’s the families of the [workers who have died], they’re the big influences in these people’s lives. Hopefully that gets through.

One concern that has been raised is that in these sorts of meetings, it can be hard for a family to separate their own grief from the particular thing that they’re talking about with you – and that you might end up as a scapegoat for things that you’re not responsible for. Did you feel that?

No. We were among the group who they weren’t necessarily happy with. Unlike the others, we voluntarily – we put our hand up and spoke to them.

So you didn’t feel like you were being accused of things that you were . . .

No. It’s just about the use of their names in one of our magazines, and the use of the pictures in our posters, which we then withdrew, and the promotional campaign with the fact they didn’t know it was happening because the first time they saw it was when it came rushing into their living rooms on television.

Were the people who attended the ones who were responsible for making the decisions to broadcast without consultation? Were you the person?

It was myself and the director. He couldn’t attend. I attended. The Human Resources person came with me.

So those were the main decision-makers?
I suppose it was the director and myself who made the decision. I was the one who then
developed the script for the commercial with our production company, and went to the
shoot, and was the client for the production. Then I booked the campaign on the basis of
when it was likely to have most effect.

*Did the families comment on the fact that the director wasn’t there?*

No. I was the villain, so – no I think they were satisfied - the feedback I got from [the grief-
support worker] was very positive. So I think they were quite happy that two of the very
senior people in the organisation had met them.

*How did you feel after the meeting?*

Yeah, we felt good. I think we had coffee and cakes. One of the widows just cried the entire
time. I think she had been crying for about a year and a half by then. It was at subsequent
meetings with her where she was in exactly the same situation. That’s why you realise how
incredibly hard this is, incredibly distressing.

Subsequent meetings with them, with our guys, telling them what our investigation had
shown were actually held at [the grief-support worker’s] place of work. Whether coming in
here ([our organisation’s] headquarters) was a bit daunting for them, I don’t know, but they
did. And we were glad they came. But from then, [the grief-support worker] explained it,
they didn’t want to come here because the car parking was so expensive. She was probably
right.

When we’re involved, if we can be of assistance, we will be of assistance. And we’ll look for
ways of being of assistance, rather than trying to look for ways that we can’t be of
assistance. Which is a very negative approach that some organisations take to these things,
where they hide behind lawyers.

*So this is the sort of thing you would do again if the same sort of thing happened?*

Yes.

*When you’ve spoken to colleagues about it, how do they respond?*

They are probably not quite as sympathetic to it as we were. They might not see the
relevance. They’re more matter of fact in the way they have to go about the investigations.
They do lots of these, and they go to a lot of them, and they’re not a very nice job to do. But
there’s certainly not been any hostility of any sort. The fact that I didn’t have to persuade
them to come to meetings, to meet the families, they were happy to do it. We’ll create a
culture in the organisation hopefully. There’s a lot more to going out and doing an
investigation, measurements, getting a few witness statements, presenting a report. There
are other issues.

*So has this incident helped to create that culture?*

Not immediately, but it has probably helped, yes, toward creating it. If we do have the same
situation you can always rely on our cooperation, but it might be difficult, depending on
the people. But I think I know my colleagues well enough to know that they mostly would say ‘yes, we’ll do that’. . .

The director’s been totally supportive of it, 100% supportive. He’s admitted that we should have looked for [the families]. We should have looked harder. . . . I suppose we just felt we just had to get out there very quickly. . . . We had two within a matter of two weeks in April 2006. And the last one was on a Friday and by the middle of that Friday afternoon, we’d actually committed to $70-80,000 of local radio advertising in regional Victoria. That’s how important it was to us, even though it was only two to three deaths that might occur within an hour on Melbourne’s roads tonight. But we’re talking about two different things.

What do you think about the idea of an RJ service that operates within the area of work-related death? Do you think that would be helpful?

Yes, I do. Generally most companies would be appreciative of that. A friend of mine years ago wrote a book: ‘Good companies who do bad things’ and every now and again, they do do bad things. Not necessarily in relation to accidents to employees, but when their products are pretty bloody bad. Instead of coming up front and saying ok we’ve got a bad product and take it out, they lie . . .

There was that American mob, going back 10 or more years, some health thing that was - breast implants. They just persevered with that and would not accept that they had done the wrong thing. . . . I went to a public relations awards night in Sydney where their main speaker was an apologist for this lot. After a while people started yelling, ‘get off, get off’. The fact that he was there in the first place was bad enough, without the bloody shocking message that he was relaying.

So if you do the wrong thing, ‘fess up. Soon as you realise you have done the wrong thing. There are some shonks out there who set out to do the wrong thing. Others believe they are doing the right thing and then they get caught out. The best thing is to fess up rather than to push on and pretend it’s not happening, and doing an awful amount of damage.

We’ve had issues with a couple of organisations that we’ve told them some time ago that they were doing the wrong thing, and its only now that they’ve accepted that they have done the wrong thing. The actual cost of putting it right is much higher now than if they had accepted it straightaway when they were first alerted. They’re both probably organisations that have been around for a long time that have done nothing wrong previously. They make things and they sell them, and there’s nothing wrong in that. And generally the products have been very good. But something’s gone wrong in the last few years where they are not so good. And it’s about accepting that and then going out and putting it right. If it takes three months later before they accept it, well that’s a hell of a lot more cost than it would have been if they had tackled it in the first place.

Is it a useful thing to give companies like that a chance to meet victims?

In some circumstances, yes. But one size doesn’t fit all, by any means. Horses for courses: where it’s appropriate; where it’s going to be helpful; when it can be done. And helpful to both sides, not just to one. Perhaps the victims more so than [the employer] – but a lot of them wouldn’t do it. . .

Is there anything you’d like to say?
We’re grateful for the work that [the grief-support worker] and people have done for us... We’re comfortable with our relationship with the people. I think they’ve understood our position. I think apologising right up front... that was a good thing to do.

We’ve learnt a lot of things out of it. We haven’t learned the entire lesson - there are always further lessons to be learned, as each situation develops. But at least we’re conscious of the need to be aware of these sorts of things. So it has been useful yes.