

Directors insurance.

**Safework abandon
workers.**

**Workplace Safety being
sidelined by Workers
Comp reforms.**

Disability.

Primary Psych Claim

Accepted High Needs 22% WPI

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Introduction

This discussion paper is not worth the paper it is written on because nothing discussed in it actually happens. I am not a law reform campaigner. My experience of WHS and workers compensation has made it clear that law reform is pointless because nobody follows the law anyway.

Not only is the law not followed, but the duties created by the legislation can be outsourced to insurers, so they do not fall on the employers and managers in the way the act says they do.

When the law is broken, Safework does nothing.

I will be focusing on Question 5, 11, 26, 37.

WHS law creates zero mitigation of risk for psychological injury, in fact it increases what the risk would otherwise be if it were simply left to common law and individual liability.

Please see other submissions and attachments

Insurance (a duty CAN be transferred to another person)

The on paper duties created for PCBUs and Officers can be outsourced to insurers. This undermines the law. It means workers are not safe. It removes the incentives to be safe and compliant. It also changes who the respondent is where issues arrive, because the respondent is not the individual but the army of lawyers and bottomless pit of litigation that is an insurance company.

Insurers mean matters can be settled, confidentially, and without acceptance of liability. Some may see this as even worse, because it means problems get buried instead of addressed.

Insurance is Subrogation. The insurer "stands in the shoes of" the insured. Directors and officers buy the insurance so that if they are not held accountable.

The impact on workers is that there is no accountability for injury, even when the heinous nature of negligence by those with duties is so serious that the corporate veil can be pierced.

Warnings to responsible parties that they can be held personally liable such as this

Managers Beware! You may be personally liable for breaches of the Fair Work Act 2009 (Cth)

<http://hwlebsworth.com.au/managers-beware-you-may-be-personally-labile-for-breaches-of-the-fair-work-act-2009-cth/>

are completely meaningless.

Even actual breaches of employment practices legislation can be insured against. That means **discrimination. Actual malice. Bullying and harassment. Retaliation for making workplace safety reports.** Workers have zero protection.

<https://www.vero.com.au/professional-financial-risks/directors-officers-liability.html>

- directors' and officers' liability cover for non-indemnifiable directors' and officers' liabilities
- company reimbursement cover for indemnifiable directors' and officers' liabilities
- representation expenses at inquiries (no allegation of wrongful act required)
- company securities cover
- inquiry/defence costs for WH&S investigations/proceedings
- pecuniary penalties (as permitted by law)
- optional employment practices liability.

Safework does nothing.

I started out wanting simply to be able to exist in a safe workplace. I ended up an injured worker with high needs, whole person impairment of 22%, never able to work again. Safework did nothing.

See the letter from Safework NSW attached.

I first made a complaint to the old Workcover on 15 April 2015

I had to wait until January 2017 for this letter.

By then I was unable to ever work again. What I got told was that if I could get reinstated they might take a look at it. This is nothing, added to the nothing they had done for two years.

I had to fight for two years for Safework to even look at this properly. Eventually there was a finding that the employer breached their bullying policy and breached the requirements of the medical certificate.

So where is the prosecution? Well, nobody can be bothered fighting the insurer with the liability to pay for employment practices, directors and officers liability, and WHS breaches.

Safework doing nothing translates to – the government department could not be bothered starting a time consuming and expensive fight with a bunch of insurance companies because nobody was looking and it was not politically sexy to do so. The pretense of ensuring responsibility by those named in the act is a fiction.

So even when the employer

- has no policies or procedures around psychological injury,
- has no mention of psychological injury in their WHS documentation
- is not compliant with their government funding agreement because they have not done any of the required quality assurance documentation that include WHS
- is retaliating against a whistleblower by injuring them deliberately
- breaches their own policies
- breaches restrictions on the medical certificate
- allows the perpetrator to decide that the organisation will not have an investigation into alleged bullying by them
- allows the perpetrator to continually contact the victim at home, even after the victim has complained
- hires their own lawyer to harass and bully the injured worker and their doctor
- allows the perpetrator to be the employer contact (and thereby breach the victims privacy on every detail of their injury) in the injury management plan until August 2017, eight months after the Safework finding, and eighteen months after liability was accepted

nobody does anything. It's a protection racket for perpetrators.

Where is the prosecution? Where is the accountability?

Safework had to be dragged kicking and screaming for two years to look at this matter.

I was given absolutely zero support by anyone to stop bullying. Safework (the old workcover) closed my bullying complaint the day it was received without looking at it. I had to go to the Fair Work Commission unrepresented, where, like anyone unrepresented, I was not successful. Safework then substituted the Fair Work decision for its own decision. Safework could not do this because it operates under NSW legislation, and the FWC operates under Commonwealth legislation, and those acts are not the same or substitutable for each other.

The insurer delayed accepting liability until after the FWC stop bullying hearing, to sabotage my complaint and attempt to be able to work in a safe workplace.

Safework delayed finding that the employer had broken the law until after my unfair dismissal hearing, to sabotage my complaint and attempt to be able to work in a safe workplace.

Safework refused point blank to discharge its responsibilities until I was so injured that I would never work again, when what they were required to do was ensure that the workplace was safe for me to work in two years prior.

Workplace Safety is being sidelined by Workers Compensation “reform” in NSW

I refer you to Figure 1 in the Discussion Paper on workers compensation dispute resolution 2018

You will notice that Workplace Safety is entirely missing from their proposed conception of the model.

What they are expecting workers, and injured workers, to swallow is safety-free workplace frameworks.

Why this is unacceptable should be self-evident.

Safety is inseparable from injury. A zero-safety model of workers compensation dispute resolution is absolutely unacceptable.

2.1 Functions of a dispute resolution system and how they are currently delivered in NSW

Roles of the scheme bodies in the current system					
Scheme bodies		Claimant support	Legal support	Dispute management/ resolution	System oversight
	SIRA	Handles complaints and enquiries, info provision		Work capacity decision merit review	Scheme regulator
	WIRO	Handles complaints against insurers, provides info about options	Delegated by SIRA to administer funding for ILARS	Procedural review of work capacity decision	Can inquire into and report to the Minister on matters arising in connection with the Acts
	WCC	Information provision about its processes		Liability, medical disputes and injury management	
	icare and other insurers	Information provision about claim and dispute processes		Internal review of work capacity decision and review of liability disputes before they proceed to WCC (optional)	
	NSW Legislative Council Standing Committee on Law and Justice				Parliamentary oversight focussed at the whole of scheme level
	NSW Ombudsman				Independent oversight of administrative conduct of SIRA, icare and WIRO

Disability

There is a glaring issue that has been overlooked, and that is disability.

Workers compensation, and the victims injured in the workplace, are often people with disability prior to the workplace injury, or the workplace injury creates a disability.

In 2018 we are in the post-NDIS era and people with disability have value. It is not OK that workplace injury has no conception of the way disability operates in the workplace injury model, which is currently a protection racket for perpetrators. Workers do not have injury insurance, rather perpetrators can be completely insured against liability for injuring workers, breaching WHS obligations, and breaching employment laws.

People with disability have rights. These rights arise at the time of injury, not three years later when they get an accepted claim for 22% whole person impairment. My rights as a person with disability have been trampled upon relentlessly by the WHS model for the last three years.

I would argue that disability rights already exist in the current model in that disability rights are not extinguished by the current model which ignores them. My argument is not simply that there is injustice that should be recognised at law, but that every part of the way that WHS and Workers Compensation operates in practice is already legally invalid, because disability is an issue at every stage, and the fact that disability is ignored at every stage means that the current operation of WHS and workers compensation is generating liabilities for state and federal government that need to be accounted for, and restitution in damages paid to a large cohort of people. Trampling on disability, while running a protection racket for perpetrators, is at the heart of why WHS and Workers Compensation schemes have no social licence in the community.

Disability is such a large issue it could have its own inquiry, and should be mentioned and grappled with in the report.

Still waiting for an apology.

I am still waiting for an apology and compensation for the harm caused by Safework's negligence.

Accountability would look like

- being able to access documents. NSW ICARE has an exemption from the GIPA act which means I have been unable to access the correspondence to and from the perpetrator and insurer and related parties. I am being denied the ability to see the content of the privacy violation of Safework/Workcover letting the perpetrator be in charge of the employers investigation, or lack of investigation into themselves, beign in charge of the insurer's lack of investigation, continuing to harass me at home, and continuing to be the employer contact with access to my claim for two and a half years.
- Being able to see that the WorkCover staff who closed my complaint the day it was received in April 2015 are disciplined or fired
- Being able to see that the WorkCover staff who failed or refused to discharge their responsibilities under the act are disciplined or fired
- Ministerial accountability for running a protection racket for perpetrators.
- Compensation from Safework for economic loss (difference between what I can retrieve from workers compensation/ work injury damages and what I would otherwise have earned), non-economic loss, and pain and suffering.

Conclusion

I found out about this review hours before the deadline. After fighting for three years and after being deliberately injured by the perpetrator and their protection racket. and nobody doing anything about it, never being able to work again, I have nothing left.