

3 October 2005

Professor Kate Warner  
Tasmanian Law Reform Institute  
Private Bag 89  
Hobart TAS 7001

Dear Prof Warner,

I am writing in response to your Issues Paper No 9, pertaining to the Criminal Liability of Organisations.

The Recruitment and Consulting Services Association is the peak industry body for recruitment and on-hired employee services - that is we are the experts in flexible employment solutions, and represent the majority of Australian companies which place 'temporary' or 'labour hire' employees (known as on-hired employees). We would like to thank you for the opportunity to respond to your Issues Paper, and I must apologise for our late response.

The flexibility provided by on-hired employees has benefited the growth of many businesses in Tasmania and nationally. Staff shortages can be quickly resolved, as can seasonal labour requirements. The productivity gains that on-hired employees provide business make their use a sensible and sound business approach.

The RCSA believes that any proposed legislation regarding criminal liability for workplace deaths or injuries needs to be made much more clear regarding third party employment services. The RCSA accepts that an on-hired employee service provider (OESP) has a responsibility to provide a safe work environment for all employees.



However, the apportionment of liability and responsibility is unclear in relation to third party labour supply. Both the host organisation (OESP client) and the OESP are responsible for employee safety, but the extent to which each is responsible in changing circumstances is not so clear. This ambiguity breeds confusion and provides the potential for inadvertent non-compliance.

The RCSA is concerned about workplace death and injury and continues to take a proactive and preventative approach to the issue with members and clients of members alike. In 2002 the RCSA released a CD Rom designed to educate all on-hired employees Australia-wide on basic health and safety procedures, and the Association's education programs for OESPs and their clients are ongoing.

The RCSA recommends that the realities of the contemporary workplace be recognised in any 'industrial manslaughter' style legislation and recommendations to law makers, and that the issue of on-hired employee services and third party employers is clarified in Tasmanian OHS legislation prior to the consideration of any increased penalties or sanctions for employers.

The RCSA has been concerned that proposed legislation in other states does not improve workplace safety or increase senior management's willingness to cooperate with regulatory authorities. Cooperation is likely to be replaced with legal representation and a process which is counterproductive.

If the Government is keen for senior executives to understand the importance of workplace safety and the terrible impact of workplace deaths, we believe that there are other educational and information strategies that can be undertaken rather than simply imposing penalty-based legislation. Such initiatives would be most welcome in the on-hired employee services industry and RCSA would be happy to work with your regulatory agencies to develop such guidance.

We are keen to work with interested bodies and governments, and discuss our views further to develop a workable solution that gives protection to both the health and safety of on-hired employees and the livelihood of on-hired employee service providers who may have limited control or influence over the safety of a client's workplace.

In particular, the RCSA would be keen to explore the concept of control with the Tasmanian Law Reform Institute, especially as your Issues Paper highlights the concepts of 'controlling mind' and identification doctrine when apportioning blame for a workplace incident. As mentioned above, in many jurisdictions, an OESP is held liable for injuries to their workers, even if the injury takes place in a worksite over which the provider has little effective control. This is an issue which the RCSA has been working hard to educate all Australian Governments about, and a situation which we believe is antiquated and needs to be changed.



I look forward to discussing the issues of control and the contemporary workplace with you in the near future.

Yours sincerely,

*Julie Mills*

Julie Mills  
CEO