



ATTENTION: Chiefs of Staff, News Directors

Today the Tasmania Law Reform Institute released its Issues Paper No 9:

Criminal Liability of Organizations.

In particular, this paper is concerned with the criminal law that applies when corporations and other entities wrongfully cause the death or serious injury of a natural person. This is most likely to be relevant to workplace deaths and injuries or 'public disasters' (for example a gas explosion or a ferry sinking). The law already allows corporations to be found guilty of criminal offences, however difficulties arise when considering traditional crimes like manslaughter or grievous bodily harm which have evolved to deal with the actions of moving, thinking, animate people. One issue in Tasmania is that manslaughter requires a homicide, which is defined as 'the killing of a human being by another', thus apparently excluding organizations. A broader issue is the method of attributing criminal liability to organizations given that they do not physically 'do' anything and do not have any 'state of mind'. The common law has tried to circumvent this by attributing to the company the actions and state of mind of the person (or people) who can be said to be the 'controlling mind' of the company. This is known as the identification doctrine. However the practices of modern corporate decision making rarely fall within the doctrine, particularly in larger corporations, where decisions are by necessity taken at the branch, unit or middle management level.

The difficulties with the identification doctrine indicate a need to reform this area of law. Reform has already taken place on a federal level in Australia and Canada as well as in the Australian Capital Territory. A number of other jurisdictions including the United Kingdom, Victoria, South Australia, Queensland and New South Wales have also considered reform, or are in the process of doing so. The issues paper discusses three different types of reform that have been adopted or proposed in these jurisdictions –

- **Introducing a specific 'industrial manslaughter' offence to the Code:** This option has been considered by a number of jurisdictions, with the ACT becoming the first to implement the reform in 2004. The introduction of related specific offences (negligently causing serious injury and specific 'senior officer' offences) is also discussed.
- **Introducing reforms to the *Workplace Health and Safety Act 1995*:** This could include introducing:
 - manslaughter and grievous bodily harm provisions
 - breach of duty causing death or grievous bodily harm provisions
 - higher maximum penalties
 - a broader range of penalties
 - senior officer liability (in an effort to encourage organizational compliance)
- **Introducing specialised principles of criminal responsibility for organizations:** This option would involve amending the criminal responsibility chapter of the Criminal Code, so that it sets out how physical elements and mental elements can be proved when dealing with an organization.

The issues paper also considers sentencing organizations. Currently, the type of sentence usually imposed on a corporation is a fine. In many instances a fine may be ill suited to achieving the aims of punishment such as denunciation and deterrence, particularly in relation to serious breaches of the law that cause death or serious injury. This paper argues that while traditional sentencing options may be effective in some instances, the potential flexibility of these options is not currently being realised, and furthermore, in many cases sentencing options more specifically designed to deal with organizations are required.

Any group or person is invited to respond to this issues paper. Following consideration of all responses it is intended that a final report will be published, containing recommendations.

The Institute invites responses to the Issues Paper by 1 August 2005.

FURTHER INFORMATION: Jenny Rudolf 6226 2069

INTERVIEWS – Friday morning: Professor Kate Warner 6226 2067

The Report can be downloaded from www.law.utas.edu.au/reform/
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