



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

INQUIRIES: Mr T J Ellis SC
OUR REF: 13033
YOUR REF:

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Professor Kate Warner
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Dear Professor Warner

ISSUES PAPER NO. 9 – CRIMINAL LIABILITY OF ORGANISATIONS

As you might be aware, I recently agreed with Ms Rudolph of your Institute to respond to this Paper despite having missed the “deadline” to do so. I told Ms Rudolph that I was ambivalent about the proposals as I saw the matter as essentially political rather than legal, and in that sense was pleased to have missed the deadline. She was, however, quite insistent and so I agreed to respond.

I have read the numerous and very interesting responses to this Paper you have already received and posted on the website.

Without seeking to minimise the thought, research and care which has obviously gone into them, they tend to reinforce my view that this is a political question, not really a legal one. Much would seem to depend on whether one visualises organisations as reasonably homogenous entities, invested with “personality”, foresight, motive, intelligence or lack of it, malice and the capacity to be wilfully blind to danger; or as being comprised of individuals, some but not all of whom may bear criminal liability for an industrial death.

I fall into the latter category, but to say so lacks legal content and therefore does not advance the argument much. Indeed, I have a real conceptual difficulty in envisaging how I would set out to a jury a case of manslaughter by an organisation, corporate or otherwise. It does not help that I cannot discern in the Paper that the authors have found a model in any jurisdiction which has proved useful, practical, effective and commanding of community acceptance. Perhaps there is a lesson in that in itself.

I think I might be on stronger legal ground to oppose the concept of senior officer offences as introducing a type of strict liability which might be unjust, and which is anyway unnecessary. Often the difficulty is not in identifying the people in an organisation responsible for decisions or omissions but rather in being persuaded that the "fault" was so egregious that a criminal charge not only could be brought but would enjoy a reasonable prospect of conviction.

Yours sincerely

T J Ellis SC
DIRECTOR OF PUBLIC PROSECUTIONS