

SUBMISSION TO TASMANIAN LAW REFORM INSTITUTE'S ISSUES PAPER NO. 9 - CRIMINAL LIABILITY OF ORGANIZATIONS

THE RELEVANCE OF THE ESSO LONGFORD ACCIDENT TO THE INDUSTRIAL MANSLAUGHTER DEBATE

The Esso Longford accident

Esso operates a natural gas plant at Longford, Victoria. In 1998 the plant suffered a major accident that caused two fatalities. This accident is often mentioned in discussions on industrial manslaughter (IM) legislation. Objective examination of the accident raises strong doubts that the Longford accident has any relevance to the IM debate.

A few examples of published material linking the Longford accident to the IM discussion are offered:-

1. "Issues Paper No. 9 – Criminal Liability of Organisations", Tasmanian Law Reform Institute¹

Paragraph 3.1.6 reads:

"A Royal Commission found that the 'real causes' of the explosion were the failure of Esso's management systems to ensure there was proper assessment of the hazards associated with the plant, and to provide appropriate training and supervision of employees in operating procedures to deal with the disaster that transpired. However no charge of manslaughter was laid."

No reasoning is given as to why the Longford accident is mentioned within the issues paper. There is no examination of its relevance. There is no explanation as to why the paper has linked the Royal Commission's findings and "manslaughter" through the word "however".

2. "Corporate Liability for Workplace Deaths and Injuries – Reflecting on Victoria's Laws in the Light of the Esso Longford Explosion", K. Wheelwright²

As indicated by the title, this paper intertwines the Longford accident, the subsequent Royal Commission and criminal trial with the various issues of industrial manslaughter legislation.

However, no reasoning is provided as to how the Longford case should or could be connected to the IM issue.

3. “Workplace death and serious injury: a snapshot of legislative developments in Australia and overseas” Commonwealth Parliamentary Library Research Brief no.7 2004–2005, K.Haines, T.John, M.Park ³

This paper surveys the state of IM legislation across all Australian jurisdictions. When it comes to Victoria, it summarises the government’s attempt to pass an IM bill in 2001. The only case of industrial fatality the paper refers to in its discussion is the Longford accident.

As illustrated by the following extracts, the paper appears to assert that the Victorian government’s IM Bill was a direct response to the Longford accident (emphasis added):

“In the wake of the Esso Longford explosion, the Victorian state government unsuccessfully attempted to pass legislation to incorporate offences for ‘corporate employers whose employees are killed or seriously injured at work’ into the Victorian criminal code.”

“The Victorian government’s legislative response to this incident, the Victorian Crimes (Workplace Deaths and Injuries) Bill 2001...”

“Based on the findings of the Longford Royal Commission, and an extended period of policy development, the Bracks government proposed to introduce the offence of ‘corporate manslaughter’”

“This Brief shows that after disasters such as the Longford explosion, governments are often quick to talk tough and advocate more stringent penalties for offenders and the creation of industrial manslaughter offences.”

The paper provides no reasoning - either directly or through references - to support these statements. The paper provides no evidence that the government’s IM Bill was a response to the Longford accident. None of the four above assertions are supported by evidence.

The relevance of Longford to the Victorian government’s IM Bill

When the Victorian government raised its IM proposals in 2001, it issued a media release detailing the reasons why it believed there was a need for the Bill⁴. This was a joint release from the Attorney General and the Minister for Workcover. The release does not mention the Longford accident.

The readings of the Bill to Parliament do not mention Longford⁵.

The debate of the Bill in Parliament⁶ touches upon Longford only in a peripheral sense. Nowhere is the accident used to support the case for the Bill, while other instances of industrial deaths are used.

It is clear that the government did not connect the Longford accident to its industrial manslaughter proposals.

Industrial manslaughter requires gross negligence

Issues paper no. 9 says that for a charge of manslaughter to be found, three elements must be proven beyond reasonable doubt, one of which is:

“That the breach of that duty [to preserve life] amounted to culpable negligence. ‘Culpable negligence’ (also often called ‘gross negligence’ or ‘criminal negligence’) is negligence which shows such disregard for the life and safety of others as to be deserving of criminal punishment.”

The Victorian government’s media release preceding the introduction of the IM Bill to Parliament said:

“Mere negligence will not be sufficient: the corporation must be grossly negligent.”

This principle is reiterated in the first reading of the Bill to Parliament.

So, “gross negligence” is to be required for a charge of industrial manslaughter to stick.

Longford and gross negligence

It does not appear that “gross negligence” was an element of the prosecution case against Esso. In his sentencing speech⁷, Justice Cummins detailed each of the eleven charges. Nowhere did he mention “negligence”, let alone “gross negligence”.

The trial took four months. Many highly technical and complex issues had to be argued before the jury. Expert witnesses from technical fields such as metallurgy and engineering gave evidence.

It would seem that if gross negligence was at the root of the accident, then this would be easily proven, and the path to verdicts would have been simpler and shorter than what actually occurred.

Does the Longford accident have a place within the industrial manslaughter debate?

The case that the Longford accident supports the argument for industrial manslaughter has not been demonstrated, let alone proven. The papers that promote the argument do not support it with evidence.

Since proof of industrial manslaughter will require “gross negligence” and negligence was not an element of the prosecution case against Esso, then it seems to follow that the Longford accident should not be connected to the industrial manslaughter debate.

Perhaps the Longford accident does have a place in the IM debate – as an example of industrial fatality that would not attract sanctions under IM law.

Why does this matter?

Objective analysis and discussion of the Longford accident and industrial manslaughter matters on two counts.

First, development of industrial manslaughter legislation ought to be based on accurate and objective analysis of cases.

Second, the Longford accident can be characterised as a *catastrophic failure of complex systems*. Such failures are rare, but they do continue to occur.

OH&S law is an important tool that can contribute to curtailing such events.

Improper attachment of industrial manslaughter concepts to events such as Longford may detract from efforts to develop appropriate OH&S law for the prevention of failures like Longford.

Finally

The Longford accident took the lives of two employees - Peter Wilson and John Lowery.

Considerable material arose from the Royal Commission and the OH&S trial. This material can be used to learn more about industrial safety and how to prevent future accidents. Considering the human cost of this accident, it behoves us to use this material accurately and objectively.

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25 Aug 2005

¹ Tasmanian Law Reform Institute Issues Paper No. 9, Criminal Liability of Organizations;
[Issues Paper No 9](#)

² K.Wheelwright, Corporate Liability for Workplace Deaths and Injuries – Reflecting on Victoria's Laws in the Light of the Esso Longford Explosion;

<http://www.lawbookco.com.au/academic/Corporate-Misconductezine/pdf/Corporate%20Liability%20for%20Workplace%20DLRwheelwright.pdf>

³ K.Haines, T.John, M.Park, Commonwealth Parliamentary Library Research Brief no.7 2004–2005, “Workplace death and serious injury: a snapshot of legislative developments in Australia and overseas”

<http://www.aph.gov.au/library/pubs/RB/index.htm>

⁴ Victorian Attorney General/Minister for Workcover, “Workplace Health and Safety, undated

⁵ Victorian Hansard

⁶ Victorian Hansard

⁷ DPP v Esso Australia Pty Ltd [2001] VSC 263 (30 July 2001)

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/vic/VSC/2001/263.html?query=%28%28esso%29+and+%28on%29%29>