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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 22225246

WORK HEALTH AUTHORITY

and

TYRONE TROY TAYLOR

JUDGE AUSTIN

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 22 JUNE 2023

Transcribed by:
Epiq:

HER HONOUR: Thank you, Tyrone Taylor.

MR GOODFELLOW: Yes, your Honour I appear for Mr Taylor.

HER HONOUR: Sorry. Now you-re - - -

MR GOODFELLOW: I appear for Mr Taylor, he's just seated outside your Honour. I asked him to stay out there for now.

HER HONOUR: Sorry I missed your name?

MR GOODFELLOW: Goodfellow, your Honour.

HER HONOUR: Mr Goodfellow.

MS MCKEON: Good morning your Honour, my name is Tanya McKeon, I seek leave from the court to represent the prosecuting authority today.

HER HONOUR: Now is this – yes, okay.

Now I'm just making some enquiries. I know that you both announced your appearances again, can you do it for me because my head is spinning this morning trying to find out if I can get another judge to do this matter. Tell me again.

MR GOODFELLOW: Good morning, your Honour, Goodfellow for Mr Taylor, yes, your Honour.

HER HONOUR: You are appearing for the defendant, Mr Goodfellow, yes. And can you tell me your name please?

MS MCKEON: Tanya McKeon.

HER HONOUR: Thank you, Ms McKeon. And you're appearing for the prosecuting agency?

MS MCKEON: That's right, your Honour.

HER HONOUR: Yes. Now tell me Ms McKeon and Mr Goodfellow what's anticipated this morning with this matter?

MS MCKEON: Your Honour we have provided some submissions to the court earlier this morning. I don't know if your Honour has that material. It can be provided but it will be submissions on sentencing.

HER HONOUR: Is it anticipated that this matter will be finalised this morning?

MS MCKEON: I believe there's a plea that's going to be - - -

HER HONOUR: Yes, is that right, Mr Goodfellow?

MR GOODFELLOW: The plea's been entered with both parties prepared to make submissions on plea.

HER HONOUR: Yes.

MR GOODFELLOW: Or sentence and haven't had it finalised yet.

HER HONOUR: All right. That's what I wanted to know. Now I'm just seeing if – it won't happen in this court in court 1, I'm just seeing I believe we may have another judge that could be available but they are not necessarily available right now. Yes. We will have to stand this matter down until 2 o'clock. If you come back at 2:00 then you will have a judge who will be allocated to you in court 4. So I'll stand the matter down to 2:00 in court 4. And then you'll get a run with a judge. Thank you for your patience.

MR GOODFELLOW: Thank your Honour.

ADJOURNED

RESUMED IN DLC4

HIS HONOUR: In the matter of Taylor.

MS MCKEON: Yes. Good afternoon, your Honour. My name is Tanya McKeon. I'm seeking leave of the court to appear on behalf of the prosecuting authority.

HIS HONOUR: McKeon?

MS MCKEON: Yes. M-c-K-e-o-n.

HIS HONOUR: M-c-K-e-o-n.

And Mr Goodfellow for the defendant.

MR GOODFELLOW: And, your Honour, I appear on behalf for Mr Taylor. And Mr Taylor appears seated behind me, your Honour.

HIS HONOUR: And Ms McKeon, you said you're seeking leave to appear.

MS MCKEON: Yes, I am, your Honour, thank you.

HIS HONOUR: You're a lawyer?

MS MCKEON: No.

HIS HONOUR: I see. Okay.

Mr Goodfellow, do you take any objection?

MR GOODFELLOW: No issue, your Honour.

HIS HONOUR: Thank you. And what are we doing today? Guilty plea?

MR GOODFELLOW: Yes, your Honour.

HIS HONOUR: And it's not a corporate entity. It's Mr Taylor, the individual?

MR GOODFELLOW: Yes, your Honour.

HIS HONOUR: And I have a complaint here. There's one count, is there, with lots of particulars?

MS MCKEON: Yes, that's right, your Honour.

MR GOODFELLOW: That's right, your Honour.

HIS HONOUR: And as far as putting the count to the defendant, we don't need to read the particulars.

MR GOODFELLOW: No, your Honour.

HIS HONOUR: And I – so yes.

Ms McKeon, if you could read the charge then. Just that on 24 August, de da, de da, de da, without reading all of the numbers.

MS MCKEON: Thank you, your Honour. So - - -

HIS HONOUR: And Mr Taylor, if you could stand, please.

Just that, where it says under charge 1, and not the underlined bit, but - - -

MS MCKEON: Okay. Thank you, your Honour.

CHARGE READ BY MS MCKEON

HIS HONOUR: How do you plead: guilty or not guilty?

THE DEFENDANT: Guilty.

HIS HONOUR: Thank you.

And I've been through the file. I got it this morning. I can't see any agreed facts. Are there meant to be agreed facts on file?

MR GOODFELLOW: There are, your Honour.

MS MCKEON: One second, please.

HIS HONOUR: Maybe they've - - -

MR GOODFELLOW: Sorry. Perhaps on the file, your Honour, that the prosecutors provided, your Honour.

HIS HONOUR: And these facts are agreed? Mr Goodfellow?

MR GOODFELLOW: They are, your Honour. Just at the very end of it talks about compliance with the notices. And the learned prosecutor – and I think it's in her written submissions and something that we discussed – that most of the rides - and I'll make submissions on it - most of the rides have now - the manuals have been produced and so that will in effect comply with, I think - so for two - - -

HIS HONOUR: So at par 8, non-compliance, that's - - -

MR GOODFELLOW: That's right.

HIS HONOUR: I'll do an asterisk about that, and we can talk about that later. And I didn't see any prosecution submissions so, I'm at an advantage to you, Mr Goodfellow. I've read all of your material, but not – I've got nothing from the prosecution, from what I can gather.

Was that handed up this morning?

MS MCKEON: Yes, your Honour. I did put it through to the court early this morning.

HIS HONOUR: Handed up paper or?

MS MCKEON: I did email. I do apologise. I did hand it through via email. I do have some things here for you if you wish.

HIS HONOUR: Emails can get lost.

MS MCKEON: Yes.

HIS HONOUR: It's usually a safe system of delivering information, but for this court, it seems not.

I've read the facts. Unless someone wants to read them, I don't see a need to read them. So I can just mark them P1 as agreed facts.

MS MCKEON: Yes, your Honour.

EXHIBIT P1 Agreed facts.

HIS HONOUR: And I will now look at the prosecution submission. I should know that initialism. PCBU. Is that the something something Business Unit, is it?

MS MCKEON: Yes. Person conducting business or undertaking, your Honour.

HIS HONOUR: Business undertaking. Person?

MS MCKEON: Person conducting business or undertaking.

HIS HONOUR: Thank you.

No objection to the receipt of the information for courts, Mr Goodfellow.

MR GOODFELLOW: No, your Honour. No.

HIS HONOUR: Okay. I've read the information for courts. I've read the submissions. I think I might have skim read a bit of yours - the background, Mr Goodfellow. But all of this highlighting I don't - no.

MR GOODFELLOW: I don't need your Honour to look through that unless we get to a point where your Honour thinks it is of use. And I can explain why. That it is really supportive material going to the comments made by Mr Forrester. Largely correspondence and efforts by him to seek extensions of time. And that's something he speaks to in that brief letter, and I'll briefly address you on.

HIS HONOUR: Yes.

MR GOODFELLOW: It's there for completeness, but not something I need your Honour to go through. Some of it is difficult to follow because it's exchanges of
- - -

HIS HONOUR: I think largely followed it. So there should - - -

MR GOODFELLOW: Yes. And I'll make some brief submissions in furtherance of the written submissions which are relied upon.

Your Honour, Mr Taylor is facing a single charge. That's the starting point. He has owned that business, Taylor's Carnival, for over 20 years. It's a business that provides amusement rides, across different states of Australia at different periods of time, but predominantly within the Northern Territory.

He has - principal source of work is via a contract with the Northern Land Council, where he would go out to communities, community fairs, and so on. It's a business that he purchased from his mother. When operating he will employ both local employees, but more importantly, when he goes to site, he will employ people on site. Well, he did.

On 26 May 2021, WorkSafe, as part of a larger national audit program, conducted an inspection of Mr Taylor's rides. There's a certain audit tool that's applied. And as part of that process, Mr Taylor was effectively found that the manual's - I use that term, but they're a combination of both logbooks, record keepings, and instructions on use. So they're clearly comprehensive documents - were inadequate.

Mr Taylor had some of that documentation that he received on purchasing the rides. But clearly, those manuals were not in conformity with what we would say is the highest standard required through this national audit system. No criticism. Entirely fair. WorkSafe issue improvement notices in May 2021. And that was different improvement notices for different rides. It could have been - and that was perhaps an official way of doing it - but it could have been one single improvement notice. Because effective of what was required for each, was fairly identical.

Those 16 improvement notices resulted in Mr Taylor ceasing the use of all those rides. But in fact ceasing work were using amusements rides, other rides that he may have had, entirely. So that business then was frozen from that point. The business has not, in any way, continued. He's not used any amusement rides - in particular, the amusement rides subject to the improvement notice - since then. So the business has been frozen. That's a really important - - -

HIS HONOUR: Even since the compliance?

MR GOODFELLOW: That's right. That's right. There's not total compliance. As I understand, there are two that are outstanding, that they are still working on, and I'll come to that in a moment. But even with that, with these proceedings and the complexities of producing the manuals with the engineer, it's Mr Taylor's intention to ensure that they're all done, until he then starts to look at re-engaging that contract with the Northern Land Council and other business opportunities, for the rides.

But it's really important though, in terms of having prospects of risk. There was never an occasion where these rides were being used, in the absence of the fully detailed manual or logbooks, in violation of the improvement notice requirement, or generating further income when those manuals weren't(sic) exist, which then may have had some consequential risk posed then to the public. There was a freeze in that business, and it's not upgraded since.

On receiving the improvement notices, Mr Taylor engaged, as is reflected in that letter. I should say, Mr Taylor provided me with an updated version of that reference letter dated more recently, but the contents are identical, so I haven't bothered providing that.

HIS HONOUR: That's - - -

MR GOODFELLOW: That's Mr

HIS HONOUR: Brian Forrester

MR GOODFELLOW: It's Acer Forester Engineering. It's someone that had worked with Mr Taylor in the past, in regard to rides. He was engaged to assist. It's considerably more complicated than Mr Taylor could undertake himself. And I can say this. This is one of the manuals, the logbooks that's been produced. I can hand it up to your Honour to have a brief look.

HIS HONOUR: Yes, please. I think it would give me an idea of the scale.

MR GOODFELLOW: That's right. So this is for the Big Swing. There's a picture at the front there. And this is one of the approved manuals. WorkSafe has had the chance to inspect, and they're satisfied it complies with the national audit program. Much of the material in that document has had to be generated by the engineer and Mr Taylor, themselves. It's not material - it's not just a gathering exercise or proforma documents.

HIS HONOUR: And was - some of the correspondence mentioned, "Why don't you try getting information from the manufacturer." Is there some of that here, or?

MR GOODFELLOW: There – as I understand, there will be. And some of that is manufacturers that perhaps don't exist anymore. They don't have the records. And also manufacturers which just aren't – frankly providing useful information. And some of the information also is contained within, say, other state registers.

So there's, for example, on one of the manuals that's still outstanding, there's a registration number. They're going back to the originating state to try and find those documents. So it's fairly labour intensive. So it's combined with labour intensive in terms of finding documents but some of the original documents that they are generating, require fairly complicated engineering knowledge.

HIS HONOUR: Well, there's a daily checklist here for 3 September 2022. So it has been used at the Cypress Community?

THE DEFENDANT: No.

HIS HONOUR: All right.

MR GOODFELLOW: No, your Honour. I know those manuals have - whilst held by Mr Taylor, none of those rides have been used in anyway.

HIS HONOUR: Well, one is 2020. The other signatures or dates are 2022. All the same date, 3 September. Maybe the year is out, but one of them says September 2022. Yes, I'll hand that back. A considerable amount of work, it looks like.

MR GOODFELLOW: That's right. And as reflected by the material from Mr Forester, he was engaged, that in of itself, is not a cheap process, in terms of they're expert engineers and they are appropriate engineers. They're not just a friend who happens to be an engineer, providing it. They're specialised engineers, and they've been engaged to assist with the production manuals for each ride.

And timing, of course, there's an issue of a 3-month time limit was placed on the production of these manuals. And it became clear that they were not going to comply with that. Whether there was any correspondence before, it's unclear to me, but certainly after the passing of that 3 months, there was a request for further time. That was rejected. There were further requests, and so on. So there's been an effort.

I don't want to get into the nuances of that debate, and that's, different parties were aggrieved that process, but the crucial part of it is this. That throughout this entire period of time, Mr Taylor has been in the process, engaged with an engineer, to have these books produced.

HIS HONOUR: And is there a date when the engineer was engaged?

THE DEFENDANT: He's been engaged the whole time.

MR GOODFELLOW: He was already in contact previously, and there's a long history. I'll look for an exact date, and put that exact date, but it was certainly not long after the – there's - sorry, your Honour. There's, in reference to the improvement notices, there's reference to the engineer being present when, I think, it was perhaps the second attendance of WorkSafe. But certainly when WorkSafe were present, there's reference to Mr Forester being present. So he was - - -

HIS HONOUR: Yes.

MR GOODFELLOW: I'll try and find that excerpt. But there's reference, from my recollection, and I hope I'm wrong, but in some of the improvement notice documents themselves, I think I recall seeing Mr Forester mentioned as a present party.

So one of the interaction reports, and this is in attendance by the WorkSafe inspector. Sorry. To give your Honour a date, 21st of the 5th. So this is the date - one of the dates where an improvement notice was issued. And it makes reference to the summary observations that - - -

HIS HONOUR: Can I just pause.

MR GOODFELLOW: Sorry, your Honour.

HIS HONOUR: The statement of facts on par 1 on 26 May 2021 – he's the business owner – at par 3, between 21 May" – on par 3, is the wrong year inserted there?

MR GOODFELLOW: No.

MS MCKEON: It's the right year, your Honour.

MR GOODFELLOW: I think it should be 2021, your Honour.

MS MCKEON: No, sorry, your Honour. Yes, that's right.

MR GOODFELLOW: Sorry, your Honour. It's my fault. I should have put that as well.

HIS HONOUR: Paragraph 3, between 21 May 2021 and 26 May 2021 – I'll make those changes.

MR GOODFELLOW: That's fine.

MS MCKEON: Thank you, your Honour.

MR GOODFELLOW: Otherwise correct.

HIS HONOUR: WorkSafe in conjunction with Taylor and his engineer, Brian Forester. So yes. He was there at the time they were issued.

MR GOODFELLOW: That's right. That's right. And that's because of that existing history and some maintenance and so on, of rides. So he was there. As reflected in that letter, the engineer, even at certain points of time, as reflected in that correspondence, took it upon himself to, not just seek further time, but act on behalf of Mr Taylor in directly contacting WorkSafe and seeking further time.

HIS HONOUR: And that itself, caused a problem, where they wouldn't talk to him.

MR GOODFELLOW: That's right. There was – I guess, he was considered an authorised person on behalf of the business so there were issues there. And this I want to avoid getting into the nuances, that back and forward. Because on one of my readings of the material, it looks like, one of the requests for an extension takes place a day or two or a few days after the expiry of that 3-month window. That may have caused issues, and so on. But the crucial part of it is, focusing on the larger objective of the Acts, there were ongoing efforts, and the efforts have been ongoing throughout this period of time.

One of the real barriers was, of course, the cost. The costs have been considerable. Of lost opportunity and lost income, but also the cost in itself of producing those documents.

HIS HONOUR: Do you have an estimate for that engineering costs or?

MR GOODFELLOW: We've tried to. The last conversation, on instructions, I saw the last number that Mr Taylor had was in the vicinity of \$30,000 plus. But because it's been such a staggered process, he thinks it's maybe – that's from documents going back some time, a number of months - and maybe it's going to be considerably more. But well over \$30,000.

And that, in and of itself, is, I guess, a by-product, or a requirement of the large undertaking. It's manuals that are up to a certain standard, and the parties are happy with them. But there's also in considering the nature and gravity of the offence, it's not the case that Mr Taylor, when receiving improvement notices, continued work and ignored them. He had his engineer there and has from that point in time has attempted to comply, ultimately.

The timing has not been satisfactory and that's really why we are at court today. It's not that there has been a failure, and a failure that exposed either employees or members of the public to risk. It's a failure to comply within a time period.

As I said earlier, all but two of the manuals have been completed. Once they're completed. Once they're complete, they're provided to WorkSafe. Mr Taylor estimates it takes that it takes about 3 months for WorkSafe to work through - given

the complexity of them - work though and be satisfied. Then they're returned. And then that enables that logbook to be filed with the company.

The two that – as I think I understand, the two that are outstanding, one just requires one registration number to be confirmed with an interstate – some sort of interstate business or registrar. So there has been efforts.

Crucially, when, your Honour is faced with WorkSafe, Occupation, Health and Safety matters, risk is the cornerstone of this entire field of legislation. And deterrence looms large as the primary sentencing consideration when one is faced more generally with WorkSafe. And that is to send a message both to the individual and the community, to ensure that dispositions, ensure those are deterred. Or ensure that companies are safe in the way they operate.

That is not a relevant sentencing consideration in my submission here, your Honour. This is not a case, where, unlike in normal provisions, the classic unsafe workplace cases require, here it is a failure to comply within a period of time. But at no point of time were members of the public, employees, staff, owners, was anyone place at risk. And that's critical. So risk is a crucial aspect of this plea.

Now, in terms of the plea of guilty, Mr Taylor - and this matter has some history - I can say this, that as soon as Mr Taylor got legal representation, and the strict liability nature of these offences were explained, there was, eventually, a negotiated process started, which resolved the matter. So it's not in terms of strict timing an early plea of guilty, but when he received the advice, he certainly undertook to pled guilty.

He has endeavoured to cooperate with WorkSafe throughout the safe. There's been attendance on site, and businesses and ongoing interactions. The reports, when often a logbook is filed with WorkSafe, there often are requirements for things to be amended, new documents, and that exchange is ongoing. That's important.

Delay. I don't point the finger at any party for delay, but there has been a significant passage of time, and this matter has hung over his head. That's crucial in terms, I guess, the general burden of legal proceedings hanging over someone's head. But more importantly here, the financial burden of not operating his business, is critical. It's resulted in financial hardship to him.

That financial hardship is a result of not only just the costs of the engineer work and the production of the reports, but lost income. It's resulted for a large period of time, up until late last year, him going onto Centrelink benefits. He's leased his property that he owns. He's residing in a caravan behind the property. He's leasing the property to help fund this process. He has, late last year, been involved in the purchase of a business sweet treats.

THE DEFENDANT: Top End Treats.

MR GOODFELLOW: Top End Treats. It's a food – ice-cream business. It travels around vans around Darwin. So that's then enabled him to move off Centrelink benefits and work since late last year.

He has conceded - - -

HIS HONOUR: No, no. I'm still stuck on that document. So if you look at that post-it note.

MR GOODFELLOW: Yes, your Honour.

HIS HONOUR: It looks like on 22 September 2022 it was at the Cyprus Community. Or am I misreading reading that somehow. There's a 2020 date. But there's a 2022 date.

MR GOODFELLOW: Yes, your Honour.

HIS HONOUR: And it just – feel free to get instructions if you want.

MR GOODFELLOW: I will, your Honour. It appears that that may be the case. That maybe this ride - - -

HIS HONOUR: Was used.

MR GOODFELLOW: Was used.

HIS HONOUR: This is not a prohibition notice; this is only an infringement notice.

MR GOODFELLOW: No, that's right, your Honour. But it appears that ride – and I'll get some instructions. We'll come back to you in a moment, your Honour. It's important, and I'll come back to that.

There is a relevant criminal prior. And I say "relevant" in a broad sense. That is a matter that reflects, I guess, the true intention of Occupational, Health and Safety law, where there's been a failure to provide a safe piece of plant or a system of work. He entered an early plea of guilty to that matter, and that resulted in him being fined.

Now, it has been suggested that this offence, in combination with that, is reflective of a general attitude towards Occupational, Health and Safety law, or Workplace Safety, that someone that has no regard. But I would seek to rebut that assertion, that the prior has relevance. But it would be a very different starting place for this matter if we were facing a further charge of failing to provide a safe piece of plant or a safe workplace. And that's not the case.

This is a failure to comply with an improvement notice. And the improvement notices were in and of themselves, a creation of manuals that were adequate to a certain standard. They weren't improvement notices that went – which is often the case – where there's attendance on a work site and there is an unsafe workplace,

unsafe system, like wiring, and there is an improvement notice for that safe – for that system of work or that circumstance in a workplace to be rectified. Which may reflect a further disregard of workplace safety.

That's not the case here. He has a relevant prior. Importantly, as part of the process, as well as receiving the fines he did, the item – the ride that was subject to that matter, was destroyed. And that had a consequential financial burden on him. He had to bear the cost of that process and that was a significant financial loss for the company.

He has a long history of operating numerous rides across the Northern Territory and different parts of Australia, and he has one prior. That's not to downplay that. Sorry, one court appearance that involved three charges. That history, both past and up until now, is in fact reflective of someone that does take workplace safety seriously. His obligations under the Act, seriously. If he didn't, there would be far more than just that one prior court appearance and is someone that would probably eventually not be able to work in the industry he does, so.

There is an oddity, I can say finally, before coming to getting some further instructions, there is the oddity of - as this matter, your Honour, he's charged with failing to comply with an improvement notice. He comes before the court whilst still actively acting engaged in the process of trying to comply with those same improvement notices. So there is an oddity in that.

Usually, a charge for an offence or failure to comply with a certain requirement, would, in fact, end that requirement. But it does not here. He continues to attempt to comply. And he has gone a significant way to comply in both of those two documents. And that's why this position that I've sought in my written submission, I have sought.

This is not a case where the court needs to send a message to the community to ensure safe workplaces. The fact that this matter is brought before the court, in and of itself, sends that message, that it's important to comply with improvement notices. But it's also – this is the nuance of this matter – where this is a man, in fact, attempting to comply with improvement notices.

I don't think there's any need taking your Honour through that Mr Forester document. It just speaks to the fact that he's a contact, his impression of Mr Taylor, and his attitude towards workplace safety. And also the efforts by Mr Forester to comply.

They are the submission I seek to make for now. I'll get some instructions and come back to your Honour.

Perhaps I'll just say this. In terms of sentencing practice, I have nothing to offer. I've endeavoured, both within the Northern Territory and other jurisdictions, to find any useful comparatives to hand up to your Honour.

HIS HONOUR: I did a very quick search on AustLII, and it was surprising how few hits there were.

MR GOODFELLOW: That's right, your Honour. There was one on the NT WorkSafe site. It's the matter of Ryan Watts. It's not particularly useful. It's a matter, I guess, of some relevance in that it wasn't in of itself going to the core of the Act regarding workplace safety. It was a circumstance where a subcontractor had fallen from height. And there were requests by WorkSafe for documents pursuant to s 155 of the Acts. And that wasn't complied with.

So it was effectively a request by WorkSafe that wasn't complied with. I'd say it was significantly more serious because that has the tendency to undermine the powers of WorkSafe. And he was fined \$4000.

So, I said finally. That's not finally. There's, in the learned prosecutor's written submissions, reference to suggested fine totals and so on. I would caution to your Honour we're facing a single charge here. There was an administrative, ultimately, administrative, and that's no criticism, decision to impose 16 improvement notices.

And so it's particularised as that. It's a single charge though and it would be improper for a fine to be imposed for each of those improvements' notices. It's a single offence. And that's the very final page, your Honour, of the prosecutor's written submissions.

Your Honour, it would be improper to impose individual fines for each improvement notice and aggregate those fines. That's the submissions I seek to make for now unless I can assist.

HIS HONOUR: Thank you.

MR GOODFELLOW: And I'll come back to your Honour in a moment.

HIS HONOUR: Thank you.

Ms McKeon.

MS MCKEON: Thank you, your Honour. I just wanted to raise what was addressed in terms of the single charge and some sort of dispute with the 16 infringement notices. According to the regulations the amusement ride is a plant and each plant needs to be dealt with separately.

By rights and in hindsight it should have been 16 charges as well for each different plant in this instance. Only one charge was done for all of the plants but it is quite right that infringement notices were issued for each one.

I note that Mr Taylor has, in my friend's submissions, operated the business for 20 years. I'm told by the workplace inspectors that it is a requirement for him. And

I would also note that he did not receive any, I guess, any manufacturing specifications or any manuals when he purchased the amusement rides.

It's incumbent on him to have that sort of information. I would expect him to have that information after 20 years in the industry. It's a requirement of him that if does lack the manufacturer's specifications he has to go to a competent person.

In this instance it would be the engineer to gather all that relevant information otherwise he has to do a yearly annual service of each plant and this wasn't complied with. As I said, I would expect that being in the business for 20 years that that would have occurred.

I also wanted to, in addition to the submissions that I have provided you, your Honour, give a bit of context and maybe clear up the timeline for you. I've got some information from the manager of the inspectors. She's the manager, regulatory manager, compliance manager I apologise.

HIS HONOUR: Is that Ms Peters?

MS MCKEON: This is regulatory compliance manager from NT WorkSafe, your Honour.

HIS HONOUR: Yes.

MS MCKEON: And she's provided me an accurate timeline of the process and the contact between the defendant and the inspectors. So, I'm notified that May 2020-21 he met with the inspectors and they had discussions with him on what he should be doing to comply with the regulations.

There's certain regulations that they did refer to. 237, records of plant.

He's required to:

"Keep records of all tests, inspections, maintenance commissioning, decommissioning, dismantling and alterations of the plant."

Also regulation 238:

"Operation of amusement devices and (inaudible) ropeways."

Again:

"Personal management or control of an amusement device must ensure the device or ropeways operated only by a person who provide instructions."

There was no record of that the inspectors could locate. They did have informal discussions with him to help him try and fix these things. After that, 6 June 2021, the

improvement notices – I do apologise, your Honour. In May 2020-21 I believe prohibition notices were issued.

On 8 June 2021 improvement notices were issued with a due date of 24 August 2021. So, that's the 16 improvement notices. That's the first date they were issued to him. He was given the due date of 24 August 2021. This provided him with 13 weeks from the first discussions with the inspectors and 11 weeks from the date of issue of those notices.

On 17 August 2021 the defendant was sent a reminder email that they were due very soon. An email was received from this engineer, Mr Brian Forester requesting extra time for the notices. He sent this email at 4:48 two days before the due date of 24 August.

2 September the inspectors met with the defendant again. 16 notices were reissued with assorted due dates to assist him so that he didn't have to do them all at the same time. He could do them at different times and they weren't going to be all due at that same time and date. They gave him the benefit of giving him different due dates on those. These due dates ranged from 10 September to 29 October 2021.

On 16 September 2021, your Honour, a reminder email was sent to Mr Taylor, sorry, the defendant again for these notices that were due. The beginning ones on 17 September that were due. And again on 16 September 2021 Mr Brian Forester, the engineer, who sends another email through to the inspector requesting extension of time. He sent this again at 4:21 pm on 16 September.

On 17 September 2021 an email was sent from the inspector advising that the extension of time would not be granted. On 27 September 2021 the inspector met with the engineer Mr Brian Forester to discuss the discrepancies with the logbooks.

On 30 September 2021 an email from the engineer Mr Brian Forester was sent at 4:23 pm that he wouldn't be submitting any logbooks and he needed to do more work on them. So, the inspectors were doing a lot of work to assist the defendant to get these manuals, information, everything up to scratch. At this stage they had issued the notices twice and given him ample time.

On 1 October 2021 I understand a request - - -

HIS HONOUR: So, were fresh notices issued?

MS MCKEON: They were on the same plants. Once it expires they must reissue another one. They cannot extend it per se. So, they must issue a new notice, new number but the same requests or details were made, same information. They required the same information from him.

HIS HONOUR: And that was with that staggered dates of September was it?

MS MCKEON: That's right. I've got here that on September 2021 the improvements notices were reissued with staggering due dates. So, we've got from 10 - - -

HIS HONOUR: September.

MS MCKEON: Yes. 17 September 2021 through to - - -

HIS HONOUR: Do you know if that 10 September one was complied with because there was only talk afterwards about 17 September.

MS MCKEON: Yes. Sorry, your Honour. Big swing was due on 10 September. Big swing was only remedied on 3 January 2023. Significant amount of time since the very first improvement notice was issued.

I will turn your attention back to the timeline again, your Honour. So, I do have the request for review which was submitted. The review was a request to, for the refusal to extend dates. I understand on 20 October 2021 a letter was sent to the defendant stating that the review, the extension was refused.

All notices that were not met, they weren't met by the due dates, and again in July 2022 16 improvements notices were reissued for the third time.

HIS HONOUR: July '22.

MS MCKEON: July 2022. As a result - - -

HIS HONOUR: I'll hear from Mr Goodfellow in a second but, yes, strictly speaking – we can drop the strictly speaking. I am here to determine one charge. That is that he did not complete these within three months by 24 August, whatever it was.

So, it's probably informative of what happened afterwards but when it comes to sentence I won't sentence on the third. It doesn't exist. There's no charge for that that I know of. I won't sentence on the second, same. All I'm sentencing on is the failure to complete by August 2021.

But I'll let you keep going because it's probably informative as to his remorse or how much effort he was making and at what time so continue.

MS MCKEON: Thank you, your Honour. I guess, again, it's just context for you to consider. I guess when sentencing in terms of the compromise and assistance that the defendant was offered by the inspectors over a significant period of time.

Again, if you're looking at prior to the due date of 27 August 2021, as I mentioned, he was first spoken to in May and given a significant amount of time until then to comply with those notices and it didn't occur.

HIS HONOUR: And just on that issue, do you say, like, we're looking there at one blue folder and presumably there's 16 others containing what I'm told are unique documents for each different piece of plant. You say 13 weeks is sufficient to come up with that?

MS MCKEON: Again, they requested extension. As you said, you might not be turning your mind to the subsequent reissuing of the notices. But they did not take action. They did not take action in terms of the breaches of the regulations. They did not take action in terms of an infringement notice. They continued to work with him and reissued the notices a further two times.

HIS HONOUR: Yes. I'm not sure if you accidentally or intentionally avoided to answer the question but I'll ask it again. Do you say 13 weeks is enough time to comply with the 16 infringement notices?

MS MCKEON: My advice from the two inspectors is that it is sufficient time to comply.

HIS HONOUR: Thank you.

MS MCKEON: Thank you. For your information, your Honour, at the time today of the 16 notices 14 have been remedied as at 3 January 2023. Small swings which was number 2 on the list is remedied but there's no design registration so it cannot be used until it's registered. Mini pirate ship is not remedied.

There are a number of issues identified, continue to be identified with the history of the ride and there's discrepancies with the design registration. And I do apologise, there's a third one, activity ride horse and seats merry-go-round has a prohibition notice in place so that cannot be used.

HIS HONOUR: 13 were remedied by January 2023 then?

MS MCKEON: That's correct, your Honour. And I do apologise, on pink mouse helicopter up and down which is number 4 on the list that I did provide you, that was remedied 29 December 2022.

HIS HONOUR: Yes. Anything further?

MS MCKEON: So, in the circumstances, your Honour, there is an ongoing concern for the prosecution that the defendant didn't appear to take any of his duties seriously. I do understand that he did comply. There was no issue with him not wanting to work with the inspectors.

It appears there might have been, as stated by one of the inspectors, almost an ignorance or a lack of knowledge which raises serious concerns considering if he has been in the business for 20 years and continues to want to remain in the business and utilising these devices or these plants it does cause us concern.

It might be difficult, I guess, for him to engage the appropriate competent person to provide the documents and the maintenance records and such that he was required to do. But this, again, goes to the heart of, I guess, the defendant's duty to ensure the devices are checked and maintained appropriately in line with the regulations.

I refer to the conviction that was on 27 October 2021. They are serious offences that he was convicted of. I note that no conviction was recorded. I do understand that there was a fine, quite a hefty fine, that was provided by Judge Woodcock.

I also, your Honour, the infringement notices that were in relation to this. So, this was, I guess, a small escalation. They issued the 16 infringement notices for each separate plant and they were at a cost of \$760 each which totalled \$12,160.

HIS HONOUR: That's a cost to WorkSafe is it?

MS MCKEON: No, no, your Honour. That's the infringement notice. The Code specifies certain amounts for, as per any infringement notice.

HIS HONOUR: A penalty that's paid by the defendant?

MS MCKEON: Yes. So, with the infringement notices that were issued to him in July 2022 were for breaching the improvement notices and the infringement notice cost was \$720 each with the remaining amount as in victim levy. So, 760 in total each which is 12,160 the total of the infringement notices.

HIS HONOUR: Now, let me find your submissions. That's on par 3. I misread the word infringement notice.

MS MCKEON: Sorry, on the last page of my submissions.

HIS HONOUR: And us lawyers, we have a special meaning for costs. That's the legal costs but that's a statutory fine type penalty is it?

MS MCKEON: Yes.

HIS HONOUR: And that's been paid?

MS MCKEON: No. He elected to go to court on it. He contested the infringement notices. Again, your Honour, that goes to, I believe that the fact that the defendant did not think that he had done anything or had any requirement to comply with these.

He did contest the infringement notices and continued to contest the facts until only very recently when he did receive, I guess, legal advice and there were discussions had.

There's a significant period of time since the very first conversations with the defendant back in May 2021 to today. I believe goes to also him not having, I guess,

an understanding or some sort of remorse or some sort of, I guess, motivation to get these devices safe.

I know that the show is coming up and I know that my friend did discuss the risks and the risks to the public, the risks to the community. For WorkSafe we do consider the risk and it is a risk to have things like, plants like this out being used by the community and by the public.

The very reasons why these regulations are in place is to make sure that there's proper systems and proper manuals and maintenance records. And as I said to you previously I believe 20 years in the industry he should have some sort of knowledge or experience in what is required by him.

And when he purchased the plants he should very well have known, and it is incumbent on him, if it did not come with manuals or maintenance records to have endeavoured to get a competent person straight away to start doing those sort of things. Your Honour.

So, I do understand 193 of the *Work, Health and Safety Legislation*, your Honour, if you're guilty of an offence maximum penalty is \$50,000 for this noncompliance. In light of the submissions and the additional information that I've raised we would ask that the defendant is convicted and that conviction is recorded.

We would also ask that a significant fine is imposed on the defendant in respect of the charges and the fine be at least 2000 for the noncompliance of each improvement notice resulting in an aggregate fine of \$32,000, your Honour.

HIS HONOUR: Thank you.

MS MCKEON: Thank you.

HIS HONOUR: And at the end of sentencing are you going to ask for costs or you don't instructions to ask for that?

MS MCKEON: I don't have instructions, your Honour.

HIS HONOUR: Thank you.

Mr Goodfellow.

MR GOODFELLOW: Briefly two things, your Honour. Firstly, regards to that notice the Cyprus Community event was an event in which constructed a jumping castle and one other small ride was used. It was contemplated that the big swing after the completion of the manual may have been used. They filled this form in. It wasn't used. It wasn't taken offsite. So, this is not a checklist that was used onsite at that fair. It was not a ride that was used.

In terms of two of the things, your Honour, this is not circumstances in which employees, members of the community were ever placed in any risk. Second is timing. There is a significant passage of time and that timing on first glance might appear to have some relevance.

But it's crucial that if one looks at the charge, this charge relates to a failure to comply on 24 August 2021. Now, I'm not taking issue with the fact there was reissuing of infringement notices and so on. But much of an attempt to cooperate, much of that is mute time given and there was a failure to comply with these improvement notices despite ongoing efforts within that period of time. That's what this charge relates to.

On 27 August the engineer sought an extension of time and he notes in the second page of his statement extension of matter, workers were required. It is in his statement required for his logbook. He raised a concern with WorkSafe, it made it impossible to rectify the logbooks within the required timeframe. He goes on, 26 August seeks an extension. That then triggers that process of back and forward.

Now, it is unquestionably a complicated process to produce the logbooks. It's an expensive process and it's a process that from the very beginning Mr Taylor was endeavouring to comply with. The engineer also sought extensions of time when it granted. Now, these are strictly liability offences.

Now, when that date kicked over the offence was committed. That's why there was such a concerted effort not just in requests but also engaging in internal appeal process to seek further time, but was unsuccessful. So there may be further infringement notices in the passage of time, but the ultimate issue is that as of that date, he had failed the improvement notices, and he was in breach of the requirement.

What then takes place afterwards is, to some extent, not overly relevant to the offence itself, save for the fact that there were ongoing exchanges, and there has been a concerted effort to produce the (inaudible). Beyond that, your Honour, I don't think I can assist any further.

HIS HONOUR: Thank you. I've got a fair bit of material here that I have considered, and written submissions for both parties, which is useful. Of course, the statement of alleged facts, priors, sentencing remarks from an earlier matter, which is in this area, but a different type of offending, and I think it was behind the sentencing submissions of the defendant, a lot of the primary correspondence explaining what was going on. I think that's all of the material.

And as an overview, it – we have 16 infringement notices issued in May 2021, and a requirement that they be complied with by 24 August 2021. There's a lot of submission and discussion and correspondence about what happened after that date, but the defendant is not charged with failing to comply with the second improvement notices, or the third improvement notices.

He is only charged with failing to comply with the first, that is, what – when it comes to sentencing, what did he do, what's his extent of culpability as at 24 August 2021. In answering that question, it probably is worth considering what happened after that time, as to determine his degree of remorse, his antecedents, they are circumstances where post – prime sentencing events can be taken into account. But, primarily, the assessment of penalty should focus on, amongst all the other issues like specific and general deterrence, on his culpability as at 24 August 2021. And in that regard, he was given 16 infringement notices. I will accept that he – and it's an agreed fact – that the date was, in some part, negotiated between the parties, and may be the defendant didn't realise the amount of work that was going to be involved.

I have seen one logbook manual folder for one ride, and it does seem extensive, and I accept what is written by Mr Forester as how extensive it was. And I also accept, though, the prosecution's submission that the complaint about the amount of work and how we need more time was not made until on or about 24, 22, not far – not long before that due date, 26 August, I've got one, which is after the due date.

In any event, a lot of work was required, and it would have been difficult to produce all of that if it was a well-funded organisation with a team of occ health and safety, and a budget to employ engineers, it probably could have been done. But then again, from the correspondence, it talks about getting information from other third parties, either governments or manufacturers OEM details. So even then, with a bigger budget, it would have been difficult to comply.

Coupled with that, we have Covid issues, which would have affected the defendant's business and income. And I think the defence mentioned mental health consequences. He stopped trading, stopped using the machines, and went on Centrelink, lived in a caravan and rented out his house. All of that is relevant.

I guess it should have started probably, which is the main pitch from Mr Goodfellow, as the primary factor is, the objects of the Act and minimising risk. And here, the risk is, if there aren't good paper systems of inspection and recording, then hardware can deteriorate and fail and there will be injuries just from the failure to have good systems. So it is a real risk if it's not complied with, but here, we have the defendant saying that he stopped using the machines, and hasn't used them.

I've got a little query about that submission, having seen that – what I'm told was an effort to use it, in September 2022, but I will generally accept the submission that whilst this was going on, the plant was not in use, and yes, the infringement notice was not complied with, and yes, it can have risk consequences, but in this circumstance, where the plant was not in use, it didn't. So net effect, low risk, difficulty in compliance.

I'm focusing on what could and should have happened by August, and it seems to me that it was too much of a task to complete in that time. He has priors. He got away with a non-conviction on the earlier occasion – excuse me. I'm going to record

a conviction and fine the defendant \$5000, given the relatively low end of the spectrum that we are at in this offending. Costs of 150 victim's levy.

MR GOODFELLOW: As your Honour pleases.

HIS HONOUR: Anything further? Thank you.

ADJOURNED