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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 21925754

WORK HEALTH AUTHORITY

and

INDERVON PTY LTD

(Sentencing Remarks)

JUDGE MCNAMARA

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 29 APRIL 2020

Transcribed by:
EPIQ

HER HONOUR: I was provided with a number of comparative sentences for the purposes of assessing a penalty in this matter. The facts of this matter are, of course, unique and clarity always presents challenges to the court when faced with matters where so many different considerations vary from matter to matter and different factors must be considered.

I do agree with the prosecution that the factual matrix is more serious than in *Gibbo's Tyres* and at least as serious as that in the *Worker Health Authority v Glen Cameron Nominees* that was a decision in the Local Court delivered 22 March 2019. And I form that view based on the level of actual knowledge possessed by the staff charged with Mr Demarni's(?) supervision and training that gave rise to foreseeability and the systemic failure of the organisation to respond to those deficiencies that had been identified through his induction and training.

Similar considerations arise as in the *Work Health Authority v Northern Territory Christian Schools*, however, and that was a decision delivered 4 August 2017 and referred to by both parties and that is regarding the potential impact of any fine in disadvantaged communities that are the beneficiaries of (inaudible) council. But I do bear that in mind although I balance that against the seriousness of the breach that warrants the imposition of a large penalty.

I also bear in mind that while Indervon has some capacity to pay a fine as demonstrated by the profit statement that capacity is limited noting the financial positions of the company overall.

The seriousness of this matter, the seriousness of the breach of duty and the real high need to achieve general deterrence necessitates imposing a conviction and I have received no submission to the contrary.

In all of the circumstances, I have determined that a fine of \$200,000 is appropriate. On account of the plea, prior good character, exemplary post offence conduct and genuine remorse demonstrated by Indervon, I reduce that amount by 30 per cent and arrive at a fine of \$140,000. And there is a victim's levy of \$1250 that also needs to be paid.

Is there anything arising there counsel?

MR THOMAS: Your Honour the only other thing was costs. In relation to costs, in my submission, relevantly ss 77A and 77C of the *Local Court (Criminal Procedure) Act* apply. In terms of costs which I would submit the usual amount of \$1500 is applicable here.

HER HONOUR: Is there any objection to costs in that amount?

MS MARTHUR: No, I don't wish to be heard on that matter or against that matter.

HER HONOUR: I further order costs in the amount of \$1500 be paid by Indervon to the Work Health Authority of the Northern Territory.

MR THOMAS: Yes, may it please the court.

HER HONOUR: Pursuant to ss 77A and 77C of the *Local Court (Criminal Procedure) Act*.

MR THOMAS: Yes, may it please the court.

HER HONOUR: Thank you. And just for counsel's benefit, I am happy to give you a copy of my written reasons. I will have those - - -

MS MARTHUR: I was going to ask whether there would be a written judgement and/or a transcript be ordered. I would be grateful for the judgment.

HER HONOUR: I will direct that that be provided within seven days.

MR THOMAS: May it please the court.

HER HONOUR: Thank you. I adjourn the court.

ADJOURNED