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NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

No 21723389

WORK HEALTH AUTHORITY

and

NORTHERN TERRITORY CHRISTIAN
SCHOOLS

(Sentencing Remarks)

JUDGE MORRIS

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 4 AUGUST 2017

Transcribed by:
DTI

HER HONOUR: Thank you. And, thank you for the email confirming what I thought about the victim's levy. Is there anything further from either of you?

MR THOMAS: No, your Honour.

MS TRUMAN: No, your Honour.

HER HONOUR: Okay. NT Christian Schools have pleaded guilty today in relation to one criminal charge under the Work Health and Safety (National Uniform Legislation) Act, contrary to s 32 of the Act and what that charge is, is that they, on 6 August 2015, at Gawa Christian School on Elcho Island in the Northern Territory failed to comply with their duty, pursuant to the Act.

They have entered this plea at an early opportunity and it is accompanied and accepted and from all of the evidence before me, and from the submissions at the Bar table, by deep remorse in relation to both, of course, their failure pursuant to the Act and the consequences of that failure in relation to the death of Jethro.

It is clear from the evidence before me that there is not just remorse, but an understanding of the wrongdoing that occurred by their organisation on that day. The coroner in his inquest into this death concluded in his final paragraph of his coronial findings with the words, 'It is such a tragedy that it took the death of this child for the organisation to realise its shortcomings and full understand its duties.'

That of course, is true. But, I do accept from all of the evidence before me that that organisation has realised its shortcomings and now fully understands its duties. Procedures are now in place to ensure that their schools, not just the Gawa School, but the other schools are, and remain safe places for their children and staff.

A school in a small community, particularly one with this history that has been described to me today, at the top end of Elcho Island is an integral and important part of the community. This school was built and then rebuilt by them and it is one that they are no doubt proud of and pleased to have so that their children don't have to go to school somewhere else.

Its activities form an integral part of the daily life of that small community. It is clear from the school's action and from the organisation, NT Christian Schools action immediately after this incident and to this state that they recognise that. That is, the integral and important nature of a school in a community.

The school is not an outside institution, despite the fact of course that NT Christian Schools has a number of different schools. But, the running of that school is not an outside institution, but part of that community. And, the defendant; that is NT Christian Schools efforts to grieve, talk, repair and build relationships with the community appear to have been non-stop since this offence and with a great effort to be culturally appropriate.

Undoubtedly, some of the things that they have done since that time in order to do those particular things, were also of financial impost. Others would be of emotional impost. For example, finding former teachers who had close relationships with the community and flying them in. There would have been a financial impost for that, but also a huge emotional toll on the people who were willing to do that work.

Both the costs appear to have been very willingly, and without question borne by the defendant. They can only be described, since the commission of this offence on 6 August 2015, as model defendants, if there is such a thing. Risk assessment and OH&S requirements are not just a matter, of course, of filling in forms. Although many organisations and businesses find the process of doing these things onerous, nit-picky and repetitive.

Risk management is about assessing and accommodating risk and the process itself can serve to remind people and companies of their roles and responsibilities. It is clear on the day of the troopy pull that NT Christian Schools failed to comply with its duty under the Act.

In my view, the failure was not a minor one. Given the nature of the activity and the extent of the departure, there was, in my view, a high risk of injury because of the activity. Jethro's death has had an enormous impact on the community, his school and most of all, of course, his family who loved him dearly.

That death is not an element of the offence for which the defendants are being sentenced. I am not weighing his worth for his life in my decision. That of course, is something immeasurable. I'm assisted in trying to explain those principles with the case that was earlier handed up by counsel, DPP v Frewstal, where their Honours say at par 127:

In our opinion, sentencing judges should be guided by the following principles: First, unlike cases of unlawful homicide, the occurrence of death or serious injury is not an element of the offences charged. An accused is punished according to the gravity of the breach of duty owed, not according to the result of consequences of the breach.

Secondly, the gravity of the breach is measured by two factors: the seriousness of the breach itself; that is the extent to which the defendant has departed from its statutory duty and the extent of the risk of death or serious injury which might result from the breach.

Thirdly, an assessment of the extent of the risk itself involves consideration of two factors: the likelihood of the occurrence of an event as a result of the breach, such as the even that occurred in that particular case; endangering the safety of employees or others and the potential gravity of the consequence of such an event, in particular, whether there is a risk of death or serious injury.

Fourthly, the fact that breach in the particular case resulted in death is relevant only in the sense that it might manifest or demonstrate the degree of seriousness with a relevant threat to health or safety resulting from the breach.

As I said, in my view, it is clear from all the evidence that the breach was serious. It wasn't though, accompanied by any malice, any intent, any mispurposiveness, in order, for example, to meet a target or some kind of workplace commercial gain. For example, ignoring a workplace safety issue in a factory, because you were attempting to maintain some kind of target for production.

But, nonetheless, it is still a serious risk and the risk was high, given that children were involved; that it was at a school; that the surface that they were participating on and the situation at the end of the day, with many community members in attendance.

In considering sentence, counsel for the defendants have asked me to consider s 8 of the Sentencing Act and not record a conviction. Section 8, of course, has various arms in relation to both the nature and character and antecedence of a defendant and also the circumstances of the offence.

Of course, in order to utilise or consider s 8, you don't have to necessarily find everything that the section provides for in order for a no conviction to be recorded. I have, of course, in considering the first section about character and an antecedence, where the defendant, of course, has no blemish on their character and indeed, as I said, could be called a model defendant.

In relation to the circumstance of the offence, in my view, it is not a trivial offence and was a serious breach. I have weighed up all of those factors, including the other principles of the Sentencing Act, of course, and the sections under s 8 and I do intend to record a conviction in relation to the matter.

The penalty and maximum penalty, of course, is a very large financial penalty in relation to this kind of offence. Because I am imposing a fine, I consider the defendant's capacity to pay. It is, I have now been informed by their counsel, they do have capacity to pay a fine, but it would appear to be a limited one.

The defendant is a company, but it is in its operation, more like an organisation. It has a charitable purpose, with it perhaps a small c, in relation to being – it's not set up as a registered charity, per se. It has an educative purpose. It runs very similar to many small, not-for-profit organisations that exist in the Northern Territory.

The financial penalty would have an impact on the various activities that by its charter it attempts to carry out; that is the education of young people, many of whom are in remote places and many of whom are the most perhaps underprivileged and vulnerable when it comes to education and have very high education needs.

I consider, and must weigh of course, all of these factors and to meet all of the considerations in the Sentencing Act, including general deterrence. When I think

about general deterrence in relation to this case, I think not of deterring major multinational companies, but sending a message to other organisations who are in a similar position to this one, and are of similar like-minded organisations.

Having considered all of those factors, the defendant, NT Christian Schools is convicted of the offence and fined \$50,000. I also impose the mandatory \$1500 victim's levy in relation to the finding of guilt.

I make a couple of other orders and I have already received in chambers an application to view and copy from the photographs that form part of exhibit 2. I do make an order that the media may have access to exhibit 1 and I made that clear, I think, earlier today. However, I decline in relation to exhibit 2.

The photos, and I'm not sure whether some of those photos were already in the general domain or not, but they contain pictures of the deceased and I'm uncertain as to whether his family would find that distressing. They also contain photos of other children and there are photos of other children and staff, what I presume are community members. They may or may not be staff members of the school, I'm not sure.

I realise of course, the importance of pictures in relation to conveying a story across all different types of media. But, in all of the circumstances, considering the nature of those pictures and the distress that they may well cause people who have had a lot of distress I decline to allow access to that particular exhibit number 2.

In relation to the name of the deceased involved in these proceedings, he is to be referred to in any publication as Jethro, rather than his full indigenous name.

Is there any other matters?

MS TRUMAN: No, your Honour.

MR THOMAS: No, your Honour.

HER HONOUR: Thank you.

Adjourn the court.

ADJOURNED