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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 21320629

WORK HEALTH AUTHORITY

and

PERKINS WELDING &  
FABRICATION PTY LTD

(Sentencing Remarks)

MR J NEILL, SM

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 15 JULY 2013

Transcribed by:  
DTI

HIS HONOUR: On file 21320629, where Perkins Welding and Fabrication Proprietary Limited is the body corporate which has been charged, and I've found the offences proven today.

I've done that on an ex parte basis, being satisfied both as to the service of the relevant summons on that body corporate which happened back in May, but also of attendance by the sole officer, Mr Perkins, on the last occasion 1 July 2013. Mr Perkins has chosen not to appear today, nor has he arranged for any legal representative to appear. Notwithstanding that he is well aware that the matter was to proceed today.

The charges against the body corporate as have been placed on the court records are that he employed workers without taking out a policy of work health insurance to cover them. The agreed facts are that he did seek to prevail upon these two workers to have them register – take out an Australian Business Number and register – such that they could work for him in circumstances where he was not required to have a policy of work health insurance in place.

For whatever reason, the two workers did not attend to this even though the agreed facts tell me that Mr Perkins gave them leave from work to attend to that very task. Notwithstanding that he made efforts to have those two men take out Australian Business Numbers - and thereby relieve the corporation from the obligation to have work health insurance policies covering those men - until such time as they might have presented him with an Australian Business Number, he was obliged by law to have a policy of work health insurance in place to protect those men while they carried out work.

Whether that was for a few hours, a few days, a few weeks, or a few months. The defendant corporation did not take out that policy of insurance. The fact that it was trying to deal with the obligation in an alternative way in no way reduces the seriousness of the omission.

One of the two workers suffered a serious injury, I'm told, as part of the agreed facts. That because of prompt medical attention he has essentially recovered in full, but this was over a period of some months, during which time medical expenses were incurred.

Pain and suffering was involved, disability was involved, and the nominal insurer system established in the Northern Territory to take care of people who are injured in the course of their employment in the absence of work health insurance had to expend significant sums of money.

These are extremely serious offences where the need to send a message to everybody in the community is paramount. Very significant fines are provided for, as Mr Murphy has helpfully calculated in the prosecution's sentencing submissions.

The maximum penalty of the corporation is five times the prescribed maximum penalty, it comes to some \$174,675. That's for count 1, the failure to have a policy of work health insurance in place.

The second offence deals with only one of those employees, Mr (Inaudible), who suffered the injury. When the corporate employer was made aware of the injury it took no steps at all to inform the appropriate authorities of the injury.

Something which it's obliged to do as a matter of law, and there are good public policy reasons why all employers are obliged to inform NT WorkSafe in the event of any serious accident happening on a worksite. Because it must be investigated and where there's risks which can be controlled in the future, that's got to be identified and dealt with.

The corporate employer did nothing. Indeed, on the agreed facts he was dismissive and unhelpful.

The maximum penalty there is \$50,000. I have proceeded today on an ex parte basis, because I'm satisfied that the corporate employer was well aware of the proceedings. That it has chosen not to involve itself.

I regard these as extremely serious offences. There is nothing before me to suggest that this corporation has previously offended in either of these ways, or in any similar way, but I regard the seriousness of the offending as such that in relation to each offence, I am going to impose a fine approximately one-third of the maximum penalty available.

- For count 1, the corporation Perkins Welding and Fabrication Proprietary Limited is convicted and fined \$58,225. In addition, it will pay the victim's levy of \$200.
- Count 2, the failure to inform necessary authorities of the workplace injury; Perkins Welding and Fabrication Proprietary Limited is convicted. It is fined \$16,000 plus the victim's levy of \$200.
- In addition, I impose court costs relevant to filing and serving the general operation of the matter, equivalent to \$888.03.
- I decline to order restitution of monies paid out by the nominal insurer.

Mr Murphy, is there anything further?

MR MURPHY: No, your Honour.

HIS HONOUR: Thank you for your assistance today.

ADJOURNED