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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 22105421, 22105423, 22105422

WORK HEALTH AUTHORITY

and

MEGAN JANE NOTT

WORK HEALTH AUTHORITY

and

NT ESTATE PTY LTD

WORK HEALTH AUTHORITY

and

SPRINGS OPCO

(Sentencing Remarks only)

JUDGE BORCHERS

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 12 OCTOBER 2021

Transcribed by:  
Epiq:

HIS HONOUR: Megan Jane Nott is a director of Springs OpCo Pty Ltd, trading as Alice in the Territory, and the operating company for a business located on Stephens Road, Mount Johns, Alice Springs. Ms Nott is also a director of NT Estate Pty Ltd, the owner of the property. The two corporate entities and Ms Nott, as director, are charged with offences pursuant to the *Work Health and Safety (National Uniform Legislation) Act 2011* arising from an incident that occurred on 15 February 2019 when Meredith Anne Kattenhorn, the general manager of the Alice on Territory resort, was injured when she accessed an electrical switchboard whilst attempting to reset a lighting circuit breaker.

Ms Nott is charged by complaint with:

- (1) Pursuant to s 32, being a person with a Category 2 health and safety duty, failed to comply with that duty and the failure exposed Ms Kattenhorn to the risk of death or serious injury, the maximum penalty is \$300,000;
- (2) She is charged pursuant to s 33, being a person with a Category 3 health and safety duty, failed to comply with that duty and the maximum penalty is \$100,000. Ms Nott's health and safety duties are largely set out in s 22 of the Act.

Springs OpCo Pty Ltd is also charged with two offences under the legislation, being offences pursuant to ss 32 and 33. The health and safety duties of the company employing workers is largely set out in s 19. The maximum penalty under s 32 is \$1,000,500 and the maximum penalty under s 33 is \$300,000. NT Estate Pty Ltd is charged with the same offences as Springs OpCo Pty Ltd and faces the same maximum penalties. Its duties in respect of health and safety are also largely found in s 19.

The three defendants entered pleas of guilty through their solicitor to count 1 in each instance; that is, the charge under s 32. The charges under s 33 were withdrawn and dismissed in respect of each of the defendants. Agreed facts were tendered and read onto the record on 28 September 2021 and both the NT Work Health Authority and the defendants have provided the court with written submissions, for which I thank them. In addition, a comparative table of sentences has been provided to assist this court.

The agreed facts are, in summary, as follows. At about 10.30 am on 5 February 2019 Ms Kattenhorn was showing an employee around the resort. Ms Kattenhorn had noted that the car park lights were not working and was showing the employee where the electrical switchboards were located. Ms Kattenhorn was aware of the location of the mechanical services switchboard, as it was common practice for staff to access the mechanical services switchboard to reset the gas isolator.

Ms Kattenhorn and the employee went to the main mechanical services switchboard and opened the unlocked doors. Ms Kattenhorn realised that there was nothing she could do to fix the issue and went to close the doors to the mechanical services switchboard.

As Ms Kattenhorn closed the doors, she tripped and reached out with her right hand, causing it to come into contact with a live component of the mechanical services switchboard, resulting in Ms Kattenhorn receiving an electrical shock. The doors to the mechanical services switchboard were capable of each being locked. Over the years the keys had never been replaced, resulting in the doors being left unlocked.

As a result of the electrical shock, Ms Kattenhorn attended the Alice Springs Hospital. She was discharged the same day. She complained of persistent partial numbness to her hand and foot. About two weeks later she was still suffering some mobility problems, having difficulty showering, driving and walking. There is no further evidence regarding Ms Kattenhorn's injuries, so it is unknown whether her difficulties completely disappeared and, if so, when.

What occurred on 5 February 2021 was the result of the failure of the defendants to comply with their health and safety duties towards Ms Kattenhorn. Those failures can be summarised as follows: failures to provide a safe workplace in that:

1. The mechanical services switchboard was not locked as the key had been lost and the lock not replaced;
2. There were no warning signs on the mechanical services switchboard to the effect that:
  - a) only authorised persons should access it and
  - b) it contained live and exposed wiring,
  - c) the mechanical services switchboard had not been maintained to accord with current standards, in particular concealing the exposed wiring behind panels.

The defendants also failed in their duties towards Ms Kattenhorn by not engaging in safe work practices. In short, Ms Kattenhorn was not provided with any specific health and safety training as the defendants had relied on an obsolete operations manual prepared for an unrelated New South Wales company with reference to repealed interstate legislation. It appears that this manual had not been revised since 2004. This demonstrated a failure to keep up to date with work health procedures and policies. Ms Kattenhorn was also given no or inadequate instructions regarding potential hazards, in particular electrical hazards, in that she was referred to – she was directed to refer such queries to a qualified Alice Springs electrician, who was expected to give her directions that may or may not have been in accordance with accepted work and health practices.

What should have been done was these enquiries should have been specified in a work and health manual. This practice did not eliminate or minimise potential risks. Rather, it abrogated duties to the independent electrician. This in itself is not an aggravating factor, as long as the direction to Ms Kattenhorn was clear that all electrical work was only to be undertaken by an authorised person. Unfortunately, such a direction was not given in a precise manner. It is estimated by the prosecutor that in making the physical changes to eliminate or reduce the risk – that is, signage, locks and concealment panels – may have cost up to a vicinity of \$1000 and,

therefore, could easily have been achieved. This court is now informed that these remediation efforts have been completed.

The charges required the developing of a mental health – sorry, a work health and safety manual and the training of staff to implement policies and procedures. This may have cost more than the \$1000. But given that the workforce employed by the defendants was small, this would not have been difficult and would not have been financially onerous.

I accept that the defendants have accepted responsibility by entering early pleas. I also accept that they have been cooperative with NT WorkSafe authority. I accept that they have been remorseful and have implemented the appropriate changes. I note that Ms Nott has attempted to be a hands-on director, but this has not – and that this has not been easy from New South Wales. I accept that medical assistance was offered to Ms Kattenhorn at the defendant's expense to assist her should she have required such further assistance.

General sentencing principles are to be found in s 5 of the *Sentencing Act*. The starting point must be the objective seriousness of the offending, determined by the nature of the facts. Objectively, this is at the lower end. The potential risk of an accident associated with the mechanical services switchboard had been contemplated by the defendant and had not been totally ignored. However, their response was inadequate and could have led potentially to serious harm. The actual harm suffered by Ms Kattenhorn was at the lower end of the scale. The steps to minimise and remove the risk was easily implemented and would, as I have said, not have imposed a significant financial burden on the defendants. To some extent this raises the defendant's culpability.

I have taken into account the principles enunciated in *Comcare v The Commonwealth*; that is, the *Madgwick* principles. I note that the defendants have no previous convictions in respect of work health and safety matters. I do not know how long the defendants have been operating businesses employing staff, but I am inferring from other facts such as the 2004 manual that it has been for some considerable time without any previous breaches. This is a matter that must be taken into account in determining the appropriate penalty.

I give consideration to deterrence. No doubt, this matter has been of significant concern to the parties, and the defendants have undoubtedly taken it seriously. The more general aspects of deterrence are not largely known, except that it should be widely accepted that work health and safety is highly regulated and there is vigilant observance of the need to be compliant.

Taking all those matters into account, in relation to Ms Nott, whilst I find the offence proved, I do not register a conviction and she is fined \$5000.

In relation to Springs OpCo Pty Ltd, again, I find the offence proved, do not register a conviction but impose a fine of \$15,000.

In respect of NT Estate Pty Ltd, while I find the offence proved, do not register a conviction and impose a fine of \$5000. I order costs. And, Mr Lepahe, I am ordering costs against – there will be one order of costs and I intend to make it against – for Ms Nott to pay, subject to anything that you might say.

MR LEPAHE: No, I have no objection or issue with that, your Honour.

HIS HONOUR: Costs are awarded on the understanding that they have been agreed. Costs are to be paid by Ms Nott in the sum of \$9000 to NT Work Health – Safe Authority I should say.

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