CITATION:	*Work Health Authority v Kalidonis NT Pty Ltd* [2024] NTLC 4
PARTIES:	Work Health Authority V Kalidonis NT Pty Ltd
TITLE OF COURT:	LOCAL COURT
JURISDICTION:	CRIMINAL
FILE NO(s):	22207913
DELIVERED ON:	23 August 2024
DELIVERED AT:	Darwin
HEARING DATE(s):	15-18 April 2024
DECISION OF:	Judge O'Loughlin

CATCHWORDS:

CRIMINAL LAW – failure to comply with health and safety duty – real and obvious risk – reasonably practicable – breach substantial or significant cause of risk of serious injury or death

Work Health and Safety (National Uniform Legislation) Act 2011 ss 18, 19, 32

Baiada Poultry Pty Ltd v R [2012] HCA 14
Cleanaway Operations Pty Ltd v Hanel [2022] SASC 52
DPP v Vibro-Pile (Aust) Pty Ltd [2016] VSCA 55
Grasso Consulting Engineers v SafeWork NSW [2021] NSWCCA 288
R v Commercial Industrial Construction Group Pty Ltd [2006] VSCA 181
Whittens Pty Ltd v Judge Fong Lim & Anor [2021] NTSC 9

REPRESENTATION:

Complainant Counsel:	N Papas KC & P Crean
Counsel Defendant:	D Edwardson KC & M Thomas

Decision category classification:	B
Decision ID number:	[2024] NTLC 4
Number of paragraphs:	80

IN THE LOCAL COURT
OF THE NORTHERN
TERRITORY OF AUSTRALIA
AT DARWIN

No. 22207913

BETWEEN:

WORK HEALTH AUTHORITY
Complainant

AND

KALIDONIS NT PTY LTD
Defendant

REASONS FOR DECISION
(Delivered 23 August 2024)

JUDGE O'LOUGHLIN

Introduction

1. On 20 March 2020, Mr Paul Leach, a contractor working for the Defendant, was operating an excavator and using a chain to tow another excavator. The chain snapped and struck Mr Leach in the head, causing his death.
2. The Defendant company is charged with two counts of failing to comply with a health and safety duty.

Charges and Particulars

3. The Work Health Authority alleges the Defendant breached this duty on 12 and 20 March 2020 and thereby committed two section 32 offences by failing to comply with a health and safety duty which exposed an individual to a risk of death or serious injury, contrary to section 32 of the *Work Health and Safety (National Uniform Legislation) Act 2011*.

4. The Defendant has admitted certain elements of the offences, namely that:
   4.1. the Defendant was a person or entity conducting a business or undertaking;
   4.2. that Mr Leach and other workers were workers within the meaning ascribed by the Act; and
   4.3. that the Defendant owed a duty to "ensure, so far as reasonably practicable, the health

and safety of the workers".

5. Given the above concessions, the only issues to be determined are:

   5.1. Did the Defendant fail to ensure, so far as reasonably practicable, the health and safety of the workers; and

   5.2. If so, did the failure expose individuals to a risk of death or serious injury or illness.

6. The prosecuting authority provided more than 5 pages of particulars which alleged the duty owed included:

   6.1. A duty to ensure a risk assessment was carried out each time before towing was attempted;

   6.2. Preparation of a Safe Work Systems Method Statement (SWMS) before attempting towing;

   6.3. Ensuring workers did not attempt towing until the specialist towing slings (that had been ordered on 8 March) arrived;

   6.4. Providing unequivocal directions to workers to not use chains;

   6.5. Reinforcing those directions if workers continued to use unsafe systems (chains).

Law

7. Section 19 of the Act imposes a duty on the Defendant to ensure, so far as reasonably practicable, the health and safety of its workers.

8. Section 18 lists the relevant matters to the term 'reasonably practicable', and it refers to what was:

   "reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

   (a) *the likelihood of the hazard or the risk concerned occurring; and*
   (b) *the degree of harm that might result from the hazard or the risk; and*
   (c) *what the person concerned knows, or ought reasonably to know, about:*
      (i) the hazard or the risk; and
      (ii) ways of eliminating or minimising the risk; and
   (d) *the availability and suitability of ways to eliminate or minimise the risk; and*
   (e) *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.*

9. Section 32 creates the offence of breaching the section 19 duty.

   A person commits a Category 2 offence if:

   (a) *the person has a health and safety duty; and*
   (b) *the person fails to comply with that duty; and*
   (c) *the failure exposes an individual to a risk of death or serious injury or illness.*

10. A number of authorities point out that death or injury is not an element of the offence, and it is only the **risk** to safety that is required, including *DPP v Vibro-Pile (Aust) Pty* [2016] VSCA 55:

> *[3] Axiomatically, proof of a breach …. does not require proof that the breach caused actual harm to any person. The offences created .. are risk- based, not outcome-based, offences. The breach consists in the employer's failure to eliminate or reduce a risk to employee safety. The occurrence of death or injury is of evidentiary significance only. It is not an element of the offence.*
>
> *[4] This is one of the most important — but, it seems, least well-understood — features of criminal liability under the OHSA.*
>
> *[5] Crucially, the prosecution does not need to prove that the employer's breach 'caused' the accident, or that the taking of particular safety measures would have changed the course of events on the day in question. Put another way, the prosecution does not need to establish that the defendant employer should have anticipated the risk of events unfolding precisely as they did on the day of the fatal accident.*

11. The Defendant concedes that section 32 creates a strict liability offence and there is no fault element that needs to be proved.

12. The Defendant appears to argue that the deceased Mr Leach took risks that endangered himself and this was not the fault of the Defendant. The majority in *R v Commercial Industrial Construction Group Pty Ltd* [2006] VSCA 181 stated this was not the correct approach:

> *[23] Had CICG contested the charge, the Court would have had to decide whether the company had failed to provide and maintain a safe working environment and, in particular, a safe system of work. The Court would not have been called on to decide whether, as a matter of law, the acts and omissions of [the risk taker] were the acts and omissions of the company itself. Rather, the Court would have had to decide whether, on the evidence of [the risk taker's] acts and omissions, and the resultant serious risks to which [other workers] were exposed, the company had done everything (reasonably) practicable to ensure the safety of its employees.*

13. Justice Brownhill in *Whittens Pty Ltd v Judge Fong Lim & Anor [2021] NTSC 9* agreed at [57] stated that the task of the court is to assess the elements of the offence and not be distracted by questions of attribution of the actions of a possibly recalcitrant worker:
"There was no issue as to whether, as a matter of law, the acts and omissions of the employee were the acts and omissions of the company itself; rather the issue was whether, on the evidence of the employee's acts and omissions, and the resultant serious risks to which employees were exposed, the company had done everything reasonably practicable to ensure the safety of its employees."

14. A number of authorities state that focus should be directed at the particulars of the alleged breach. In *Grasso Consulting Engineers v SafeWork* NSW [2021] NSWCCA 288 Cavanagh J stated:

[54] In a prosecution such as this the identification of the particulars of breach is critical. The prosecution must provide particulars of the acts or omissions said to give rise to the failure to comply with a health and safety duty. An accused person could only be convicted if the prosecution establishes beyond reasonable doubt that the person failed to comply with the duty in one of the ways particularised.

15. The High Court in *Baiada Poultry Pty Ltd v R* [2012] HCA 14 at [15] stated that the entity conducting the business does not need to take every possible step:

"*All elements of the statutory description of the duty were important. The words 'so far as is reasonably practicable' direct attention to the extent of the duty. The words 'reasonably practicable' indicate that the duty does not require an employer to take every possible step that could be taken. The steps that are to be taken in performance of the duty are those that are reasonably practicable for the employer to take to achieve the identified end of providing and maintaining a safe working environment. Bare demonstration that a step could have been taken and that, if taken, it might have had some effect on the safety of a working environment does not, without more, demonstrate that an employer has broken the duty imposed by s 21(1). The question remains whether the employer has so far as is reasonably practicable provided and maintained a safe working environment.*"

Causation

16. The NSW Court of Appeal has held that that causation needs to be considered when determining breach of the provision, but this has been criticised by the Victorian Court of Appeal.

17. In *Grasso Consulting Engineers Pty Ltd v SafeWork NSW* [2021] NSWCCA 288 Cavanagh J. at [230] stated:

230 "As was said in Bulga, the question is whether the acts or omissions which ground the finding of non-compliance with the duty were a significant or substantial cause of the risk to which the individual was exposed.

231 It is not sufficient that the conduct be a cause. It must be a significant or substantial cause. The use of such language tends to emphasise the importance of the conduct of the duty holder to the exposure which ultimately happened, although there may still be more than one significant cause."

18. However, the application of causation to this offence was earlier criticised in *DPP v Vibro-Pile (Aust) Pty Ltd* [2016] VSCA 55:

83 "Logically, a failure to eliminate a risk can be said to cause, or contribute to, the persistence of the risk. But the statute does not formulate the issue in those terms and, in our view, the language of causation is best avoided in this context. To speak of a 'causal connection' in this context is liable to suggest — incorrectly — that these offences require proof of a causal link between the employer's conduct and the accident or injury (which, as we have said, will

typically have triggered the investigation and prosecution).”

19. In *Cleanaway Operations Pty Ltd v Hanel* [2022] SASC 52 Kourakis CJ applied a further nuanced approach but ultimately preferred the Victorian approach and concluded that there was no element of causation:

> *52 ..., causation in the traditional sense, is not an additional element of the offence. In cases of the kind I have described the offence is not committed because the PCBU has taken all reasonable practicable measures to eliminate or reduce the risk to which workers or others were exposed.*
>
> *55 I would respectfully adopt the approach of the Victorian Court of Appeal in Director of Public Prosecutions v Vibro-Pile (Aust) Pty Ltd.”*

20. Although I agree that there ought to be no need to consider causation for this offence, it is not for this jurisdiction to declare which Court of Appeal has the correct approach. In any event, the facts in this matter are quite clear and allow me to make findings on either approach.

Facts

21. There were little factual disputes and I make the following findings.

22. Prior to 2020, the Defendant corporation won a tender to upgrade the barge landing at Maningrida.

23. On 30 January 2020, Mr Paul Leach became a worker for the Defendant and signed his acknowledgement of the Defendant’s rules, which included, “*all of our safety rules must be obeyed. Failure to do so will result in strict disciplinary action being taken*.”

<u>15 February Drowned Excavator</u>

24. On 15 February 2020, Mr Leach was excavating the bottom of the barge landing at low tide. Mr Theo Kalidonis had told Mr Leach not to worry about this area, but it seems Mr P Leach decided to ignore this direction. Together with his son Jeremey Leach, the two men worked on the area at the bottom of the landing. Unfortunately, the engine of an excavator failed, and the machine could not be retrieved such that it was submerged by the incoming tide.

25. Witness Tim Stonehill said that after the excavator got stuck Paul asked him if they had any chain to help pull it out. He went up to the yard and got four brand-new buckets of 13 mm link size chain. This was not a particular strong chain and was not designed to tow heavy machinery.

26. Mr Stonehill, who was not employed by the Defendant, said at paragraph 7 of his statement:

> *Me and one of our supervisors stood and watched them try to pull the digger out. They already had some chain they were using - ours was used to extend the length. **The chain kept snapping. It snapped 3 or 4 times**.”*

27. Mr Stonehill was not challenged on this, and I have added the emphasis to the key parts of the evidence here and in the paragraphs following.

28. Mr Leach wanted to tow the excavator out, but Theo Kalidonis said they couldn’t do it as the

tides were no longer going to be low.

29. Mr Leach was only a subcontractor at that stage, but at some later point in time he became an employee. It seems odd that if Mr Kalidonis was so upset with him, that he would continue to use as a subcontractor and then later employ him directly.

30. The excavator was on hire, and the Defendant had insurance covering this incident, but Mr Theo Kalidonis had reason to be upset by the drowned excavator. Jeremy Leach was an employee of the Defendant and he was effectively fired that day.

31. Mr Kalidonis had some stern words to Mr Leach, but he kept him on as a sub-contractor. Mr Kalidonis told Mr Leach that he "needed to authorise every single one of his activities because ultimately any issues with his work would become my responsibility and that I would terminate his subcontract if this happened again."

32. This confirms the Defendant company had the ability to authorise discrete actions on the work site and that it was willing to terminate contractors and employees if they failed to follow directions.

8 March 2020

33. On 8 March, the Defendant purchased nylon recovery straps, but they were not due to arrive in Maningrida until about 13 March.

34. The straps were rated to 70 tonnes and were up to the task of safely towing the excavator. I find that the purchase and planned use of the straps was a sensible and safe option.

35. The Defendant also explored a second option where Seaswift would use a large crane to lift the excavator onto the barge or the landing. This proposal did not eventuate, but presumably it would have been executed by qualified personnel in a safe fashion.

11 March 2020

36. The Defendant arranged for Mr D Bell, a mechanic, to fly in from Darwin on 11 March 2020. He removed the drive gears so the excavator could be towed when the straps arrived. After he did his work, Mr Leach managed to move the excavator by pushing it with the Highland I excavator. He only pushed it a couple of metres.

37. Mr Leach and assisted Mr Bell in the attempted pulling of the excavator by the deployment of double chains, but the attempts failed and the chains snapped again on this day. At paragraph 26 of his statement Mr Bell said:

"The first day he tried moving it, he used a single chain around it and the chain broke. *This chain was longer but it was a similar size as the next day. This was just before we gave up on the first day before the water came up. I don't know who put the chain on this day. "it was Paul's* ***idea to***

***use the chain. It flicked in the water and a bit in the bucket when it broke**. I wasn't really concentrating on that. The digger didn't move at all..*"

38. This is the second time the chain snapped when attempting to tow the excavator.

12 March 2020

39. On the following day, Mr Tim Stonehill was watching:

> *14. They got the treads free and using chain, not the strop which I never saw, they pulled it into the shore. Paul was towing. There was a few other people there. Theo was present and watching from the shore*

40. Alistair James gave oral evidence and provided a statement. In his oral evidence he suggested the chain snapped once, but it was unclear as English appeared to be his second language:

> *MR CREAN: You've given evidence that you watched the excavator being pulled out. Did you see anything else while the excavator was being pulled out? To the chains?---Well, when I seen it moving up, **and then suddenly – yeah, it started to snap**. But they had to tie it up again, and then – yeah – pull it up.*

41. Callum Free was also watching on 12 March and saw Mr Leach and the mechanic connecting chains between the two excavators:

> "**The chain broke twice**, the mechanic … doubled the chain and shortened it… they drag it up to the beach. **Theo was on-site when they were doing this. He was standing on the boat ramp watching** I was watching from the beach."

42. It is possible that witnesses have the days mixed up such that there was only further day of the chains snapping on either 11 or 12 March (not both).

43. In any event, Mr Pastrikos was nearby on the day the excavator was successfully dragged up onto the beach, and he said:

> *51 …. I heard like joy, loud cheering, happy. I thought what's happening. I drove down to the barge landing. Paul had the excavator on the beach **with chains attached**. It was about 3-4 metres from the waterline. He dragged it out at low tide but dragged it out past high tide marked.*
> *52. There was 2 sets of chains he looped them 3 times on 2 sets. They were a short distance maybe 4-5 metres. I had a go at him I said "Paulie you know we are not meant to do this" He said it had to be out. I told him it was an insurance claim - this was the talk between Paulie and Theo.*
>
> *55. I took the chains and put them behind the ute. I didn't taken them anywhere**. I didn't tag them out or remove them from service.** Presume these chains were the same ones I don't know.*
> *56. I don't know if they are rated. Previously we were talking about 70tonne. These chains could be 8 tonne I don't know.*
> *57. It was mentioned to Theo. I said "Theo why did we move it" he said "I never told him" and I came to see the boys and Theo was already down there"*
> *58. **I didn't do any disciplinary action. I didn't put anything out to any worker not to recover the excavator and it wasn't mentioned in any toolbox talks.***

44. Interestingly, Mr Pastrikos described himself as being "a so called site manager" for the

project. He said, "*It was mine and Theo's job to ensure workers were working to their SWMS. He more or less took over my role and delegated work to the guys and wasn't consulting me.*"

45. I have emphasised the reasonable steps that were not taken by Mr Pastikos on behalf of the Defendant, and I explore this below.

46. As to this event, Mr Kalidonis says in part:

> *34. I said to Tim that we have already organised the straps and if Paul does something without letting me know then this would be the last day he would work for me.*
> *35. Paul was still on the tidal flats with the other excavator and I could see him only using the bucket so I wasn't concerned, didn't believe Tim's comments and we kept chatting about other things. However, a little while later I looked up and to my shock, Paul was pulling the excavator by using chains. I was very upset and I was waiting for him to get out from the water. As soon as he came in to the dry land, I went close to him and I said to him to leave the excavator there on the beach and do not touch again, and remove his chains off my job site.*

47. Mr Kalidonis said he terminated the casual employment of Mr Leach that day, but later he reinstated his employment. This too is an insufficient response, which is explored below.

17 & 18 March 2020

48. Mr Kalidonis' statement indicates that he was very upset about safety breaches. He says that on about 17 March 2020, he proposed a new clause for the Remote Working and Travel policy.

> *38. At dinner time that night, I told all my workers present that I was very upset at Paul's behaviour that day and I would be writing new rules and if anyone was going to disrespect me then they would need to leave.*

49. I note that the above suggests Mr Kalidonis was upset about "disrespect" rather than the safety of workers. Also of note is that the new written rule was about costs, not safety:

> "*The person responsible for the breakdown of any type of machinery or equipment belonging to Kalidonis because of negligence and mishandling, is liable to fix those machineries or equipment at their own cost."*

50. The court book is over 1100 pages, but this is the closest a document comes to dealing with machinery procedures following the dangerous activity of towing with chains. It was drafted after chains had snapped on at least two different occasions, and yet it only states who is liable for the costs.

51. Mr Kalidonis' statement suggests that safety may have been a concern:

> *45. I then held a meeting with all the workers on the 18th of March 2020 after dinner and presented them with the new policy. I told all the workers again how upset I was about the excavator getting towed out by Paul, without any SWMS or authority and that these type of actions put my company and my people at risk. I told all my workers that everyone needed to take personal responsibility for their actions.*

52. The "new policy" was the rule about who was liable for the costs.

53. A SWMS is a safe work method statement, which is a document that requires workers to

identify the risks associated with a task and list actions that will minimise that risk. There was no evidence to suggest that SWMS or rules were generated that stated that the excavator was not to be towed by chains or only towed when the straps arrived.

20 March 2020

54. By 20 March 2020, there was a plan for Seaswift to arrive and use its 30t forklift to move the excavator onto a barge.

55. Unfortunately, Mr Leach seemingly decided to move the excavator so that it was closer to the landing. Perhaps he felt partly responsible for the drowning of the excavator, and perhaps he wanted to try to make amends.

56. He asked another worker, Ross Brian to help him. The straps had not yet arrived, and once again Mr Leach obtained the chains that had been used earlier. The straps were available and had not been tagged out.

57. Mr Leach asked Mr Brian to stand back 20 m, suggesting he knew there was a risk that the chain might snap. The chain did snap, and it whipped back and struck Mr Leach in the head. He died soon after.

58. At p342 of the court book is a transcript of Ross Bain's interview with investigators :

> *"I [was?] gonna call out for him, like say, "Paul, hang on. Hang on. The chain is slack," you know. But I just - once I raised my hands up* ***and the chain just went – like - like, snap, and it just snapped and just went, just flew back and hit him on the head****....*
>
> *When the chain went, hit him and just - he was just like - went like that, like flew.*
>
> *And I said, "Dad Paul. Are you all right?" And I can easily see the blood was running. And I didn't want to wait for anything else. Yeah. I just went down, calling out for help with the Greek boys."*

Defendant's Submissions

59. The Defendant invited the Court to carefully examine the evidence of Theo Kalidonis, Jacinta Kelly, and Ronaldo Coulson, who prepared a report for the coroner. I did that, but I also examined the other evidence carefully as well.

60. Jacinta Kelly appeared to be an honest witness, but she was in the Darwin office when the dangerous events were unfolding in Maningrida.

61. Counsel for the Defendant spent some time exploring what Ms Kelly told investigators, as a couple of documents possibly suggested she knew the excavator was being towed by a chain. However, other emails were consistent with her evidence that she did not know of the towing by chains. I accept that evidence and make no adverse findings as to her knowledge of the use of unsafe towing systems.

62. Ronaldo Coulson prepared a report for the coroner which was not critical of the Defendant and found that there were no breaches of the Criminal Code. Mr Coulson did not address the charges before this Court, and even if he did, I suspect his ultimate conclusions would not be admissible.

63. Mr Kalidonis did not give oral evidence, but a number of his statements were in the court

book. His evidence described many of the reasonable steps the Defendant took to ensure the health and safety of its workers. Those steps included purchasing 70-tonne nylon straps that were strong enough to safely tow the excavator and investigating means for other entities to conduct the salvage. Mr Kalidonis also described the occasions he reprimanded Mr Leach.

64. Although the Defendant invited the court to focus on the steps it did take, I have focussed on the critical task of identifying the particulars of the alleged breach[1]. The Court should examine the particulars to determine if the Defendant ensured, so far as reasonably practicable, the health and safety of workers and whether there was a failure that exposed workers to a risk of death or serious injury.

Substantive Findings

65. Towing an excavator is a risky task. Chains that are not designed for towing heavy machinery can suddenly break, and shock load can cause death or serious injury.

66. Even before 12 March, the likelihood of the risk of someone using chains to attempt to tow the excavator was relatively high, as Mr Leach had used chains on 15 February. The possibility that chains might snap is not a risk that was only apparent with "20/20 hindsight" after the fatal injury on 20 March 2020. The same chains had snapped while undertaking the same task of towing the excavator on 15 February and again on 11 and/or 12 March 2020. This was a very real and obvious risk.

67. There is a high degree of harm that can be caused by a snapping chain under load. The Defendant and the workers present should have known about this hazard. These are all section 18 factors that inform what is a reasonably practicable step to ensure the safety of the workers.

68. The available methods to eliminate or mitigate the above risks were available, suitable, and inexpensive. A SWMS could have been generated after 15 February and before 11 or 12 March stating "Do not tow with chains" or "Do not attempt to tow until the suitable towing gear arrives".

69. If the Defendant found it reasonably practicable to draft a new rule and have meetings about workers being personally liable for losses they cause, it would also have been reasonably practicable to have meetings and draft safety rules and SWMS. These rules would make workers aware of the dangers in attempting to tow machinery with chains and should have expressed clear consequences if the rules were breached.

70. The Defendant's actions leading up to and including 12 March were insufficient. The Defendant's actions leading up to and including 20 March were insufficient.

71. Mr Pastrikos identified at least four reasonably practical steps that the Defendant could have taken to prevent the use of chains and thereby ensure the health and safety of the workers. Those steps were to put a tag on the chains so they could not be used, remove the chains from the site, discipline Mr Leach, and /or address all the workers at the next toolbox meeting that

[1] Cavanagh J in *Grasso* at [54]

chains are not to be used for towing.

72. Not long after 15 February, it would have been reasonably practical at the next toolbox meeting to explain to the workers the dangers posed by using chains. This address to the workers could have emphasised that recovery straps had been ordered and there were to be no attempts to move the excavator until the straps arrived.

73. The 18 March meeting suggests the Defendant was more upset about the costs associated with the broken down excavator rather than the safety of staff. There was no contemporaneous document that supports the contention of Mr Kalidonis that he was very upset about the breach and safety standards by using a chain.

74. Before 11 March, the Defendant was aware that workers had used chains to tow the excavator and that the chains had snapped. This knowledge called for the clearest of instructions that this method was dangerous and unacceptable. Steps to remove the chain from the site could have been taken. It would have been reasonable to warn staff that there would be severe consequences, including termination, if this occurred again. If workers breached the direction they should have been terminated.

75. After the two attempts to tow the excavator with chains, it was reasonably practicable for the Defendant to have locked or tagged out the excavator, ensuring all workers knew that they could not touch, operate or tow the excavator. This is particular 18 a. i., and it has been proved beyond a reasonable doubt.

76. Alternatively, the Defendant could have provided an unequivocal direction to Mr Leach and the other workers that they were not to attempt to tow the excavator until the slings arrived. The only unequivocal direction was that the workers may be liable for the costs caused by their negligence. Particular 18 a. ii. has been proved by the prosecution.

77. The Defendant could have ensured a risk assessment occurred before any work was performed on the excavator (including proposed towing). Such a risk assessment would presumably identify the fact that towing the excavator with the chain was simply too dangerous and that a nylon strap was on its way. This is particular 18.c, and I find it has been proved.

78. The Defendant did not provide Mr Leach and other workers with adequate training on towing, nor did they provide adequate training on SWMS. The Defendant did not properly supervise the towing attempts by Mr Leach, and I find particulars 18 e. and f. have been proved.

79. On 12 March 2020, it would have been reasonably practicable for the Defendant to reinforce the consequences of earlier directions about not using chains. Mr Kalidonis says he terminated Mr Leach's employment on that day but he then reinstated him later. This is not reinforcement of the rule and perhaps led Mr Leach to think that future breaches would be ignored. Perhaps this caused him to think it was acceptable to use chains again on 20 March 2020. This is essentially Particulars 18 a. iii, and v., and h., and I find these have been proved.

80. I find the Work Health Authority has proved particulars 19 to 24 of Charge 1 and particulars 25 to 31 for Charge 2.

Conclusion

81. I am satisfied beyond a reasonable doubt of the following:
    a. The Defendant was a person conducting a business undertaking;
    b. The Defendant owed a duty to its workers;
    c. That duty was to, so far as reasonably practicable, ensure workers' health and safety;
    d. The Defendant failed to comply with that duty; and
    e. That failure exposed workers to the risk of death or serious injury.
82. To the extent that it is necessary, I find that the Defendant's breaches were a substantial or significant cause of the risk of serious injury or death to Mr Leach and other workers.

Orders

1. The Defendant is found guilty of count 1 and count 2 and breached section 32 of the Act.
2. The matter will be adjourned to a suitable date for submissions on sentence.