

WHS prosecutors push to reignite charges over Brad Duxbury mine death case

Workplace Health and Safety is pushing to reignite charges stemming from a death at an underground mine after a “calamitous” prosecution.

Workplace Health and Safety is pushing to reignite charges stemming from a death at a Coppabella underground mine after they were struck out because a “calamitous” prosecution resulted in the cases being listed in the wrong court.

[On November 25, 2019 Ipswich grandfather Brad Duxbury, 57, was crushed to death while repairing machinery at Carborough Downs mine](#) after defective equipment failed to stop falling coal.

[Carborough Downs Mine Management, and Jeremy David Futeran and Russell Clive Uhr, who each held the position of site senior executive at the mine in the months leading up to the tragedy, were charged](#) with failing to discharge health and safety obligations causing death.

However the WHS prosecutor who signed off on the charges had listed the matters in the magistrates court, which had no jurisdiction to hear them, rather than the industrial magistrates court and as a result in 2022 Acting Magistrate Athol Kennedy struck out all complaints.

[A recent court judgment revealed Mr Kennedy also struck out charges – filed by the same prosecutor – over the serious injury of a contractor](#) at the same mine three months before Mr Duxbury’s death.

Industrial Court of Queensland president Justice Peter Davis said given parliament had established a specialist office for workplace health and safety prosecutions it was “disappointing” the matters had not been before the correct court.

WHS is now pushing to have Mr Kennedy’s strike out orders in relation to Carborough Downs, Mr Futeran and Mr Uhr quashed and for matters to be referred to the industrial magistrates court to be dealt with

Carborough Downs, Mr Uhr and Mr Futeran each attempted to fight back against the application for “prerogative relief”, which was filed in November 2022 six days after the cut-off date, arguing the delay was significant and “pointed to prejudice”.

Mr Futeran, who left his role two months before Mr Duxbury’s death, also submitted the charge against him “as particularised showed no case against him”.

He has alleged he has not been able to secure an interview for employment opportunities because “he is being shunned because he has been charged with an offence arising from the death of Mr Duxbury” and was at the moment “effectively unemployable in Australia”, the judgment read.

Mr Uhr, who was still employed with Carborough, has alleged the company “will not consider him for (upper managerial roles) while the prosecution is on foot” and his current job did not “give access to performance scheme bonuses”.

The prosecution of the three respondents has been calamitous,” Justice Davis said, adding that “various errors” had been made from the very start.

“Over two years from the swearing of the complaint and over three years from the date of the Duxbury incident, the prosecution has not progressed at all.

“The errors have contributed to significant delays which have caused Mr Futeran significant prejudice.”

Justice Davis found the particulars of the charge against Mr Futeran over Mr Duxbury’s death appeared to be a “cut and paste” of that against Carborough Downs and “reflect no thought at all” to the fact he had left the role two months before the tragedy.

He determined continued prosecution in relation to Mr Duxbury’s death “is oppressive” and refused the application.

However WHS may still be able to pursue matters against Carborough Downs and Mr Uhr as Justice Davis found there was “an arguable case for prerogative relief”.