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I am grateful to the Queensland Courts for allowing MSIA to make this information available. It is the judge's decision which allows us to understand the requirements of the legislation and its application. This decision is provided for education and training purposes with the intent that no other mine worker or their family should have to be exposed to an unacceptable level of risk.

My hope is that learning the lessons from these past accidents will continue to assist us to improve mining safety and health and we can one day achieve our goal of every mine worker home safe every day. This court decision is provided with that intended purpose.

Mark Parcell
Mine Safety Institute of Australia Pty Ltd
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QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

QUINN, Magistrate

MAG-00038413/20(1)

OFFICE OF THE WORK HEALTH AND SAFETY PROSECUTOR	**Complainant**
and	
ANGLO COAL – MORANBAH NORTH MANAGEMENT	**Defendant**

BRISBANE

9.59 AM, THURSDAY, 11 MAY 2023

DAY 1

DECISION

Any rulings in this transcript may be extracted and revised by the presiding Judge.

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HIS HONOUR: Anglo Coal North – Moranbah North Management Pty Ltd Anglo has been charged as follows: that on 20 February 2019 at Moranbah North Mine, Anglo Coal, on whom a safety and health obligation was imposed by section 41A of the Coal Mining Safety and Health Act, the Act, did fail to discharge the said obligation in contravention of section 34 of the said Act, and the said contravention of the said Act, caused the death of Bradley Alistair Hardwick, and the said contravention of the said Act caused bodily harm to Vincent Wilson, John Jones, and Mark Dannum – Barnum, in fact.

During the trial leave was given to the Prosecution to amend the complaint by removing the name Craig Banks from the complaint. At trial, Mr Trevino KC appeared for the complainant, whilst Mr Holt KC appeared for the defendant company. There are two complaints in the one complaint, as it were, alleging firstly the death of Mr Hardwick, and secondly alleging bodily harm to three separate persons.

I am satisfied that power exists to hear both complaints in the one hearing as they both arise out of the same set of circumstances. There has, in any event, been no objection to this course. Anglo Coal has pleaded not guilty to both complaints. At the commencement of the trial Anglo made extensive admissions within the terms of the Criminal Code.

They became exhibit 1. In respect of each and every of the form of admissions contained in the exhibit 1, I so find beyond reasonable doubt. Anglo Coal admits that bodily harm was occasioned to each of the three complaints when a grader owned by Anglo collided with a drift runner vehicle also owned by Anglo when both vehicles were in the drift of the relevant mine on 20 February 19.

The death of Mr Hardwick is alleged to have occurred in a separate incident shortly before the grader hit the drift runner. At the conclusion of the trial both parties provided lengthy written submissions supplemented by oral submissions. It would not be an overstatement to observe the issues involved here are numerous, complex, and difficult.

At the conclusion of oral submissions I adjourned for decision. The parties agree, and I am satisfied, that the court should proceed in the following way in reaching its decision. Firstly, am I satisfied beyond reasonable doubt that Anglo Coal contravened section 41(1)(a) of the Act by not ensuring the risk to coal mine workers whilst at the relevant mine was at an acceptable level.

That onus being on the prosecution. Secondly, if so, am I satisfied Anglo had proven, or has proven on the balance of probabilities, a defence under section 48(2), or under section 48 of the Act generally. If satisfied of a contravention, and of no defence arising, is the court satisfied beyond reasonable doubt, the onus being on the prosecution, that Anglo – that Anglo's contravention caused the death of Mr Hardwick and or the bodily harm to the three coal miners.

If the court is not satisfied of the first question, and or a defence is made out under 48(2), it would then not be necessary for the court to proceed to deal with the third question, causation, as that only becomes necessary following a conviction for a convention. There is no dispute, and I am satisfied beyond reasonable doubt, that at all relevant times Moranbah North Coal Mine was a coal mine within the meaning of section 9 of the Act.

Anglo Coal Mine was the coal mine operator within the meaning of section 21 of the Act. Mr Hardwick, Mr Wilson, Mr Jones, and Mr Barnum were coal mine workers within the meaning of schedule 3 of the Act. Anglo Coal owned both the grader operated by Mr Hardwick, and the drift runner, and also the loader operated by Mr Cuddihy, and had supplied both the grader and loader and drift runner to coal mine workers for the use in the Moranbah North Coal Mine on the relevant day, 20 February 19.

There is quite a large volume of relevant legislation but I shall refer to only some of it. Section 34, a person on whom a safety and health obligation is imposed must discharge the obligation. Section 36, to remove doubt, it is declared that nothing in this Act that imposes a safety and health obligation on a person relieves another person of the person's safety and health obligations under the Act.

If a – section 37, if a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge the person's safety and health obligation in relation to the risk only by following the prescribed way. Section 41, a coal mine operator for a coal mine has the following obligations. I shall refer to one only, 1A, to ensure the risk to coal mine workers while at the operator's mine is at an acceptable level, including, for example, but providing and maintaining a place of work and plant in a safe state.

Turning to section 48, defences, it is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under divisions 2, 3, or 3A in relation to a risk for the person to prove 1A, if a regulation has been made about the way to achieve an acceptable level of risk, the person followed the way prescribed in the regulation to prevent the contravention.

I continued down to section 48(2). Also, it is a defence in a proceeding against a person for a offence against section 34 for the person to prove that the commission of the offence was due to causes over which the person had no control, and subsection (3), the Criminal Code, sections 23 and 24, do not apply in relation to a contravention of section 34.

Finally, regulation 66:

> *A Coal Mine's safety and health management system must provide for the continued effectiveness of breaking systems on fixed and mobile plant used at the mine.*

The system must provide for the following:

> *The dynamic testing of service breaks; appropriate testing of parking brakes; emergency brakes and other braking systems, the failure of which may create a risk to a person.*

There are other sections and subsections that probably represent the most relevant of the provisions for today's purposes, but I have considered all of the relevant legislation. I am satisfied beyond reasonable doubt as follows: on the afternoon of 20 February 2019, at around 3.30 pm, Bradley Hardwick, hereafter referred to as Hardwick, a coal mine worker employed at that time by Anglo Coal at its Moranbah North Mine as a grader driver, commenced driving an Anderson Right Cat 120G grader, referred to throughout the case as GR002, and hereafter as the grader, up the drift.

That is the mine tunnel by which workers and machinery entered and exited the mine. He was in the process of exiting the mine. There is no dispute that Hardwick conducted the prescribed safety checks on the grader, in particular brake checks prior to going into the mine that day.

Sometime later, Hardwick parked the grader in and on the drift in the process of exiting the mine, presumably to cool the grader's engine by using one of the hoses which were installed at various points in the drift for that purpose. Where Hardwick parked the grader is in dispute.

The front of the grader was facing up the grader towards the surface, that is the mine entry. At that time Hardwick was not aware the park brake was faulty and had no reasonable to suspect that the grader's brakes, in particular the park brake, were faulty. A subsequently inspection of the grader's park brake showed it had flaws and was not operating as it should have been on 20 February 19, and due to those flaws the park brake could not and did not stop the grader from rolling backwards, down into the drift, a little bit later.

Shortly after parking the grader it commenced rolling back down the drift, gathering speed as it went. The grader only came to a stop when it collided with a drift runner, another mine vehicle which was used to carry mine workers to and from the mine, which was in the process of transporting a number of mine workers out of the mine.

The drift runner had also stopped in the same drift to cool its engine, but at a spot further down the drift, into the mine, than the grader. At the time of the collision the drift runner was stationary near the bottom of the drift, at or near manhole 36. At various places along the drift, holes called manholes had been dug into the mine's side walls to provide places of safety for mine workers getting out of the way of mine vehicles travelling into and out of the mine.

In the collision, the grader pushed the drift runner in by, that is further down the drift into the mine, to about manhole 36, where both vehicles came to a stop. It is not

possible to determine how far the drift runner may have been moved but it was – it would appear only to be a short distance.

The higher the number of the manhole, the deeper into the mine you are, such that for example manhole 36 is further into the mine and down the drift than manhole 30, for example. As a consequence of the grader colliding with the drift runner, three mine workers, Barnum, Jones, and Wilson, who were passengers in the drift runner, suffered injuries.

There is no dispute that the injuries sustained by the three mine workers amount to bodily harm in each case and were caused by the grader colliding with the drift runner. That shortly after the – sorry, the aforementioned collision, the body of Hardwick was located by mine workers in the vicinity of manhole 30.

There were no eye witness to how Hardwick received his fatal injuries and no CCTV or other images from the drift. Prosecution case is a circumstantial case. The prosecution alleges that the only inference available on the evidence is an inescapable one: the grader struck and killed Hardwick, there being no other vehicle in the drift at that time which could have caused his fatal injury.

Whether or not Anglo breached section 41(1)(a) of the Act is central to both the allegations of causing the death of Hardwick, and bodily harm to the three coal mine workers. Obviously I shall proceed to deal with the – any breach of the Act first. The prosecution says that a subsequent inspection of the braking system of the grader revealed that all air had gone out of the service brakes, resulting in the service brakes being unable to hold the grader from rolling backwards, leaving only the park brake to hold the grader and prevent it from rolling backwards.

Further, due to flaws in the park brake system, it failed to stop the grader from rolling away. It does not, as I understand it, allege negligence or inadequacy of testing in relation to the service brakes. It says the runaway grader firstly struck, interacted with the description used by Mr Trevino for the prosecution, and Kyle the deceased in some way, but involving an impact-type force, and then collided with the drift runner, injured – sorry, injuring the three mine workers.

In relation to breaching the Act, prosecution alleges essentially that the Act imposed a duty on Anglo under section 41(1)(a) to ensure the risk to mine workers whilst at the mine is at mine – is at an acceptable level, and that regulation 66, binding on Anglo, of the Coal Mining Safety and Health Regulation 2017, provided for the way in which Anglo was to achieve an acceptable level of risk, but that Anglo failed to follow that regulation.

It says the risk was obvious. A coal mine worker might be harmed. Specifically it says that regulation 66 provides that a coal mine safety and health management system must provide for the appropriate testing of parking brakes, and that as undeniably the park brake system of the grader failed on 20 February 19, causing the

grader to roll backwards uncontrollably, Anglo had not complied with that regulation.

It says the regulation was not complied with because Anglo had failed to provide for a proper testing of the park brake system, acting alone and independently of the service brakes. Anglo was required by the Act to develop an appropriate testing system to independently test the park brake, but they failed to do so.

The prosecution does not dispute that Anglo had a significant machinery safety inspection system in place at the time, including for the grader. It does say, however, that Anglo did not provide for a proper park for a testing procedure to test whether the park brake actually worked.

It was not disputed that the grader has had an unusual design feature, that being this: when the park brake was engaged, the service brakes were also and simultaneously and automatically engaged at the same time. The prosecution says Anglo knew this but its testing systems did not address that feature by developing an appropriate testing system, including a separate test of the effectiveness of the park brake acting alone, as it should have.

It had only developed a test that tested the park brake system acting in conjunction with the service brakes. It says that if the park brake was tested operating alone, the flaws in the park braking system which led to the park brake being able to hold a grader after the service brakes lost air, would have been identified, and the grader would not have been in use in February – sorry, 20 February 2019, or would have been repaired.

It says no defences arise for consideration under the Act. It says that as a regulation had been made about the way to achieve an acceptable level of risk, regulation 66, and as Anglo did not follow the way prescribed, to prevent the contravention, see section 37, that section 48(1)(a) provides Anglo with no defence or comfort.

It says further that no defence under section 48(2) arises as Anglo had not provided on the balance of probabilities the breach was due to causes over which Anglo had no control. In fact, it says that within Anglo's own records was a clear statement and unambiguous warning, my words, that when the park brake engaged, the service brakes were also engaged.

It says further that Anglo cannot rely on the mistaken fact defence under section 24 and 25 of the Criminal Code. As such, the defence is specifically excluded by section 48(3) of the Act. In its defence, Anglo criticises the OEM for not disclosing to it the particular park brake system, and to alert them to the interconnection between the park brake and service brakes.

It says that it would be impermissible under the Act for Anglo to blame the OEM for not telling Anglo of that fact by virtue of section 36, which clearly states where a

safety and health obligation is placed on a person, that is to say on Anglo, that nothing relieves that person of its safety and health obligation under the Act.

Specifically, the prosecution alleges Anglo breached 41 of the Act, section 41 of the Act, and its duties and obligations of mine workers at the mine site, by not having a – in place at the relevant time, a method of appropriately testing the grader's park brake system independently of the service brakes, the failure of which may create a risk to a person.

As an appropriate testing method would have identified the flaws in the park brake system. The prosecution relies heavily on an entry discovered within Anglo's own records, which it says clearly that says – sorry, it says – that it says clearly that when the park brake was engaged, the service brakes were also simultaneously engaged, but that Anglo failed to appreciate the significance of that warning and failed to develop an appropriate testing procedure to test the park brake independently of the service brakes.

There was no real dispute that the failure of the park brake caused the grader to roll backwards into the drift, and I so find beyond reasonable doubt. The defence case essentially is that its safety and health systems at the time were robust, and provided for the appropriate testing of the graders, park braking system, and of the brakes generally.

Therefore, Anglo was not in breach of the Act in failing to ensure the coal mine – the risk to coal mine workers whilst at the mine – mine was at an acceptable level, including procedure reports to that effect. It says that it did all that it could. Further, that it was unaware of any flaws in the park brake, or in the park brake testing system, and could not reasonably be expected to have such knowledge as it had not been told of the peculiar design feature and the simultaneous engaging of the service brakes by the OEM, either – by them as an oversight, and or as a deliberate withholding of that information by the OEM.

The prosecution case is that Anglo had a duty to make itself aware of the peculiar design of the braking system and to develop and implement an appropriate testing system, that it had in place at the relevant time a rigorous and sophisticated maintenance program, including an appropriate park brake testing system.

Further, that the 16th of December 1998 schematic, which is the warning I have previously referred to within Anglo's own records, which identified the park brake interconnection with service brakes relied on by the prosecution to be too [indistinct] a reference, and as the grader had been completely overhauled in 2015, and no such schematic was relied on or referred to, Anglo was entitled to regard its testing regimes as appropriate.

The prosecution, in response, says that that approach completely overlooks the duty imposed on Anglo to be aware of its peculiar design, and to act on it in developing an appropriate testing system, and that it did not. Sections 23 and 24, as I have already

said, do not apply. That is to say, a mistake of fact, and Anglo cannot abrogate its responsibilities and obligations.

Further, the defence says that even if the grader did roll back, striking and killing Mr Hardwick, and causing bodily harm to the three workers, as a consequence of the failure of the park brake, that it is not the fault of Anglo, and it cannot be held liable for either.

It says further that the court could, in any event, not be satisfied beyond reasonable doubt that the grader caused the death of Mr Hardwick, and that the court could not be satisfied beyond reasonable doubt that the loader driven by Mr Cuddihy did not cause the death of Mr Hardwick.

Further, that even though the defence admits the grader collided with the drift runner, causing bodily harm to the three mine workers, Anglo is not liable, as it was not in breach of the Act, as it had appropriate steps to keep any risk at an acceptable level. That is only a broad brush summary of the defence case. I have, however, considered all of the evidence and the defences written in oral submission, together of course with the prosecution, written in oral submissions.

Turning now to the grader's brakes, I am satisfied beyond reasonable doubt that the grader had an unusual brake design system. The grader had service brakes and a park brake. The park – the service brakes could be applied by either applying the park brake or by depressing the service brake pedal.

There was an interrelationship between the service and park brakes. The unusual feature of the braking system, as I have already observed – I am satisfied beyond reasonable doubt, is that by engaging the park brake, the service brakes are also independently and simultaneously engaged, such that the two braking systems are engaged even though only the park brake was actually engaged.

It is clear on the evidence, and I am so satisfied beyond reasonable doubt, Anglo had an extensive and generally throughout coal mine safety and health management system in place, including for testing for brakes, which it plainly believed provided an appropriate testing of parking brakes.

Much evidence was devoted to this aspect. I am satisfied beyond reasonable doubt that after the incident on 20 February 19, a careful examination of the grader's park brake revealed serious faults in the park brake system which had not earlier been detected. I am also satisfied beyond reasonable doubt that those faults were so significant as to render the grader unsafe when it was given by Anglo to Hardwick to operate on 20 February 19.

Further, I am satisfied beyond reasonable doubt that the grader rolled back down the drift on 20 February 19, colliding with the drift runner and injuring the three workers as a direct consequences of the failure of the faulty park brake. I shall deal separately and shortly with the death of Mr Hardwick.

I am also satisfied beyond reasonable doubt that as a consequence of the unusual features referred to, when the park brake was engaged during testing by Anglo, which I accept was done, the service brake was simultaneously engaged, resulting in the two braking systems being engaged, thereby resulting in the park brake itself, alone, not being tested during maintenance. Consequently I am satisfied that pre 20 February 19, the braking testing system developed by Anglo was not appropriate for testing the braking – the park braking – sorry, testing the braking system, but in particular, of the park brake.

I am further satisfied beyond reasonable doubt that when developing the safety and health systems, Anglo failed to take into account the unusual feature referred to, or its consequences, and did not factor that feature into its testing and maintenance system. Consequently I am satisfied beyond reasonable doubt that Anglo's coal mine safety and health management system did not provide for the appropriate testing of parking brakes as required by regulation 66, which imposed such an obligation on Anglo.

I am also satisfied beyond reasonable doubt that had the park braking system alone been tested, that the faults discovered post-incident would have been expected to have been detected by Anglo pre-incident, acted upon repair, and the grader been returned to an appropriate safe condition, or put out of service until safe.

I am satisfied beyond reasonable doubt consequently on 20 February 19, Anglo provided to Mr Hardwick an unsafe piece of machinery, a grader. I am further satisfied that by so doing the safety of mine workers, in particular Hardwick, was put at risk, such risk being obvious.

I must then ask this question, however. Has Anglo breached the Act, and if so, has it a defence. Did Anglo follow the way prescribed in regulation 66. Has Anglo a defence under section 48(2). Can Anglo satisfy the court on the balance of probabilities, that is, that the commission of the offence due to causes over which Anglo had no control.

I am satisfied regulation 66 applied to Anglo on the relevant date, that sections 23 and 24 of the Criminal Code, mistake of fact, did not apply and do not apply, and that section 36 prevents Anglo from being relieved from its own safety and health obligations under the Act, by the conduct, misconduct, or admission to do something of any other person of the same obligation.

The prosecution does not submit that Anglo acted in some cavalier fashion in disregarding mine and mine workers' safety. It does not argue that Anglo did not have safety practices and procedures and machinery maintenance procedures in place on the relevant date and earlier, which, inferentially it must have believed, did provide for an appropriate safety and health system. There is no dispute, for example, that Anglo conducted the required weekly park brake dynamic test in which the operator was required to apply the park brake and then attempt to drive through

the brake in second gear, on the material before me, this test last being carried out on the 15th of February, only a few days before the incident.

I am also satisfied that Hardwick did test the brakes as required on the parked brake ramp test prior to entering the mine on the day in question. The prosecution says that nonetheless, Anglo is still in breach because it had failed to implement as part of its safety and health plan a test specifically designed to test the effectiveness of the park brake operating alone. It says that there were flaws in Anglo's safety and health management system in that it did not understand its own grader's unusual park braking system which it ought to have done, which it had an obligation to understand and act upon and failed to test the park brake itself operating alone.

Anglo is therefore in breach of section 34, it says, because its safety, health and management system did not provide for the appropriate testing of the parking brake system required by regulation 66. Although the Defence tendered a report concluding their testing procedures at the time were appropriate, I am still satisfied that it failed to act on its own knowledge of its unusual design brake feature which it was obliged to do. Anglo bitterly complained about the conduct of the OP – of the OEM, and in my view, with some justification. Anglo says the OEM did not disclose to them the unusual braking system, nor the need for specific and separate testing of the park braking system and how to rectify this unusual aspect when it should have done, and I expect that that is so.

But as I have already found, Anglo are not able to rely upon someone else not doing something that it was their duty to do. It is not apparent why the OEM acted in that way. The prosecution submits, however, that Anglo is not excused from liability due to the OEM's failure for the reasons I have just outlined. I am satisfied beyond reasonable doubt sections 24 and 25 do not apply here. The prosecution relies quite heavily on certain documents located within Anglo's own maintenance records for the relevant grader which were in existence on 20 February '19 and prior to that date. These documents are to be found in exhibit 2 pages 585 and 588.

It also relies heavily on the evidence of a Mr Peter Stewart, a leading hand in Anglo's mechanical workshop. In my view, those Anglo internal records provide compelling evidence that Anglo knew of the unusual design feature and the necessity to develop a separate, specific targeted, if you will, and appropriate test to ensure the park brake actually worked or operated correctly. That it either did not know about the entry in its internal records or it failed to appreciate its significance. It failed, therefore, to develop an appropriate testing system of the park braking system, in breach of its obligations.

The prosecution says that in Anglo's own internal records, the service brake park brake design feature was noted in a schematic described as Anderson Industries Right 120 GLP Grader Braking System approved on the 16th of December 1998 and referred to in the material as the initial braking system schematic – as I have said, exhibit 2, pages 585 and 588. It says that this schematic was stored in the grader's history file, and it was naturally – natural to infer that it came with the grader when it

arrived at the mine in 2013. I am satisfied beyond reasonable doubt that that initial braking system schematic says, and I quote, "Application of the park/automatic brake also applies the service brakes". In my view, it is difficult to accept any room for misunderstanding what is being spelt out by those words.

The prosecution submits that at some point, the initial braking system schematic was updated to relevantly record again, amongst other things, application of the park/automatic emergency brake also applies the service brakes by providing a pilot signal to service brake system. It says that this updated schematic referred to as the current braking system schematic still contained the very same warning of the interrelationship between the park brake and services brake, and once again, was within Anglo's own grader's service records and once again available for Anglo's perusal.

It says, therefore, that from the time when the grader was first introduced to the mine in 2013 until the time of the incident, Anglo had been on notice by the initial schematic and also the later current schematic, both of which Anglo had access to, of the grader's park brake service brake unusual feature. These are my words, not submitted, but the schematic, I am satisfied, is the proverbial smoking gun. I am satisfied beyond reasonable doubt that the schematics warned Anglo of the unusual brake feature with the consequences of that feature being unmistakeable.

I accept those – the – those facts that Anglo had access to those records at all relevant times, should have accessed them, should have understood their meaning and acted upon them. In his evidence, Mr Stewart says that prior to the 20th of February '19, he accessed Anglo's internal computer system and read the warning about the grader's park brake. I found him to be an honest and reliable witness who gave honest and reliable evidence. Therefore, the prosecution says employees of Anglo did have access to the warnings.

I am satisfied beyond reasonable doubt that prior to 20 February '19, that the warnings about the grader's park brake earlier referred to were contained in Anglo's own records, to which employees of Anglo and therefore Anglo itself had access, that anyone who read those records should not have failed to appreciate and understand the warning that when the park brake was engaged, the service brakes were simultaneously engaged, thereby supporting the park brake system which in those circumstances was not being tested nor operating independently on its own merits.

The prosecution submits, therefore, that Anglo – as Anglo had that knowledge within its own records, to which they had access, prior to 20 February '19. And in fact, a considerable time prior to then, Anglo knew or ought to have known that to have appreciated its significance and to have developed an appropriate testing of the grader's park braking system in accordance with its obligations under the Act. On the evidence, I am satisfied beyond reasonable doubt as follows on 20 February '19, Anglo as a mine owner, had a safety and health obligation imposed on it under

section 41(1)(a) to ensure the risk to coal mine workers while at the operator's mine was at an acceptable level.

Further, if a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge their safety and health obligation in relation to that risk only by following the prescribed way, that here, a regulation prescribed a way to minimise that risk, regulation 66. The risk here was that a coal mine worker, whilst at the mine, might be injured by a defective brake on the loader and that that risk was an obvious one. Regulation 66 further provided the coal miners safety and health management system must provide for appropriate testing of parking brakes system, and that the only method to discharge the person's safety and health obligation in relation to the risk was for the person to follow the way prescribed in regulation 66.

By virtue of section 41(1)(a) of the Act, it is a Defence to a contravention of an obligation imposed under the Act in relation to a risk for the person to prove where a regulation has been made to achieve an acceptable level of risk as is the case here, the person followed the way prescribed in that regulation to prevent the contravention. Section 48(2) provides a Defence to a section 34 contravention if the person can prove on the balance of probabilities the commission of the offence was due to causes over which the person had no control.

I am further satisfied beyond reasonable doubt that on the 20th of February 2019, Anglo provided to Hardwick, a coal miner, a grader which was in an unsafe condition. The grader was unsafe as its park braking system was faulty. The park brake system was faulty, making the grader unsafe because Anglo had not appropriately tested the park braking system and had not developed an appropriate park braking testing system for the grader, as was its obligation. Those faults would have been identified prior to 20 February '19, had an appropriate park brake testing system had been developed and acted on by Anglo.

On 20 February '19 and for a considerable time before Anglo had been aware that when the grader's park brake was engaged, the service brakes were simultaneously engaged. At the least, Anglo ought to have known and appreciated that fact. Anglo's park brake testing system did not include a separate test of the park brake acting alone. Within Anglo's own grader maintenance records were clear and unambiguous warnings to Anglo of the interrelationship between the service brakes and the park brake on which Anglo did not act when it developed its testing system and/or did not appreciate the significance and relevance of the warnings when developing its park brake testing systems when it should have.

Further, that on the 20th of February '19, the grader's park braking system failed, resulting in the grader rolling back down the drift, gathering speed as it went. Further, the park brake system failed and as it not – as it had not been tested appropriately by Anglo to see if the park braking system actually worked when acting alone, and that no such appropriate test had ever been developed by Anglo; and that as a direct result of the grader rolling backwards down and into the drift, it collided with a – a Driftrunner vehicle in which there were a number of mine

workers, including Mr Wilson, Mr Jones, and Mr Barnham; that neither the Driftrunner nor any of its occupants contributed to the collision, it being solely caused by the park brake of the loader failing, resulting in it rolling uncontrollably down the drift and colliding with the Driftrunner; that in that collision, those three mine workers each suffered injury which in each case, amounts to bodily harm; that Anglo failed to develop an appropriate park brake testing system which it was obliged to do so.

Anglo did not comply with regulation 66. Anglo failed to ensure the risk to a coal mine – sorry, to coal mine workers whilst at the mine was at an acceptable level, in contravention of section 41(1)(a) of the Act. Anglo did not follow the way prescribed in regulation 66 to prevent that contravention and that Anglo has not proven on the balance of probabilities or at all, in my view, that the commission of the offence was due to causes over which it had no control. Therefore, I am satisfied beyond – I am satisfied that no Defence under section 48(2) falls for determination, but if it does, I am satisfied in any event, the prosecution has negatived any such Defence beyond reasonable doubt.

I am consequently satisfied beyond reasonable doubt that on 20 February '19 at Moranbah North Mine, Anglo Coal, upon whom a safety and health obligation had been imposed by section 41(1)(a) of the Coal Mine – Coal Mining Safety and Health Act did fail to discharge that obligation in contravention of section 34 of the Act, and that that contravention caused bodily harm to Vincent Wilson, John Jones, and Mark Barnham. I am satisfied, therefore, the prosecution has proven each and every element of the offence beyond reasonable doubt.

I am satisfied beyond reasonable doubt that on the 20th of February '19, Anglo Coal Moranbah North Management Pty Ltd on whom a safety and health obligation was imposed by section 41(1)(a) of the Act did fail to discharge the said obligation in contravention of section 34 of the said Act and the said – said contravention caused bodily harm to Vincent Wilson, John Jones and Mark Barnham. Anglo is therefore guilty of the offence as charged. I shall deal with the question of penalty at a later time. I shall now deal with the death of Mr Hardwick.

The facts on this aspect are essentially the same as in the contravention prosecution. The onus is on the prosecution to prove beyond reasonable doubt the loader struck – or as Mr Trevino has put it, interacted with Mr Hardwick, causing his death. In his report, Professor Duflou called by the Defence expresses an opinion dealing with the mechanical workings of the loader, its swinging rear section and its ability to have essentially compressed the deceased up against the drift wall. During the hearing, Mr Trevino objected to the admissibility of that part of his report, as such opinions, he said, are outside his field of expertise as a pathologist.

He argues as well, that opinion is based on facts not proven or accepted. The Defence continued to rely upon that part of his opinion. I reserve my decision on this particular aspect until now to enable myself to consider the objection against the background of all of the evidence and to better appreciate the objection in that

context. Both parties provided written submissions in respect of this objection. The Professor is an expert pathologist. He is not an engineer. How the deceased sustained his injuries in the drift is the fundamental question for determination.

That determination, I am satisfied, necessarily involves the Court considering both the loader and the grader as potentially responsible. The objection is consequently a significant one. I am satisfied the objected to parts of the report do amount to the professor expressing an opinion about the mechanical workings of the loader. I am satisfied the professor does not possess the qualifications nor the expertise to express such an opinion, dealing as it does with engineering concepts. I am therefore satisfied that any expression of an opinion by the professor in relation to the loader – in particular, the moving rear section, is outside his field of expertise and inadmissible.

The professor, whilst being highly qualified in his field, is no more qualified than the next person to express such an opinion on an engineering matter. I have disregarded those parts, therefore, of the professor's report. The Defence case is that the Court could not be satisfied beyond reasonable doubt that the grader caused the death of Mr Hardwick. In its case, the Defence advances a positive case, as it were, that the Court could not be satisfied beyond reasonable doubt the loader driven by a Mr Cuddihy did not strike and kill the deceased. The Defence does not argue that the Court would be satisfied beyond reasonable doubt that the loader struck the deceased. It submits that the Court could not be satisfied beyond reasonable doubt that that did not happen, however.

I have already found Anglo guilty of contravening the Act by not discharging its obligations in relation to the park braking system. However, whether the Court can be satisfied beyond reasonable doubt the grader struck the deceased, is a separate and distinct question. As earlier discussed, there were no eyewitnesses to how Mr Hardwick died. The prosecution case in relation to how Hardwick died is a circumstantial one. The prosecution submits the only rational inference available on the evidence is an inference consistent only with guilty.

The prosecution called a number of witnesses in its case. Perhaps the most important of the prosecution witnesses on the question of causation is Mr Cuddihy, who on the day in question, was operating a loader, another huge piece of machinery in the same drift, around the same time as the grader, and in the vicinity of Mr Hardwick at one stage. It is this loader the Defence focuses on in its case. Cuddihy spoke to the deceased shortly before his death, and in fact, would appear to be the last person to see the deceased alive. Cuddihy says he did not see any interaction between the grader and the deceased. His evidence will be discussed in more detail shortly.

A Mr Ryan, another significant prosecution witnesses was in the Driftrunner struck by the runaway grader in the same drift on the 20th of February '19. He gave evidence of seeing a body, which eventually turned out to be the deceased, ahead of him towards the entrance after the grader had collided with the Driftrunner. Again, his evidence will be discussed in more detail shortly. Where Mr Ryan first noticed

the deceased became an important aspect of the case. Professor Duflou whom I earlier referred to, called by the Defence, produced a detailed report, gave evidence, was cross-examined. He was and is a vastly experienced specialist pathologist.

There was no challenge to his expertise but the prosecution, as I have already dealt with, objected to him expressing an opinion about the operation of the loader, it being outside his expertise. I am satisfied he is an expert pathologist, vastly experiencing – experienced in determining cause of death. He expresses an opinion casting doubt on the grader, causing the injuries suffered by the deceased. In particular, he casts doubt on a swinging bar which forms part of the grader's driver's cage, causing the most significant injury contributing to the death of the deceased.

Essentially, his evidence is that the deceased's injuries are inconsistent with having been caused by the grader. And again, his evidence will be discussed in more detail shortly. The pathologist who performed the autopsy, Dr Phillips, was called by the prosecution, provided a report which was tendered, gave evidence and was cross-examined. She also is an expert pathologist, vastly experiencing in determining cause of death. Her – her evidence will be discussed shortly as well. I am satisfied those four witnesses are the most important witnesses in relation to cause of death.

However, I wish to make it clear I have considered all of the evidence in reaching my decision, in – in relation to all other witnesses, I found each of them to be honest and reliable witnesses who each gave honest and reliable evidence. I accept their evidence in each case beyond reasonable doubt. Dr Bianca Phillips, an expert pathologist, performed the autopsy on Mr Hardwick and prepared an autopsy report dated 23 August '19, which later became exhibit 18 in these proceedings. Dr Phillips concluded cause of death as multiple injuries due to, or as a consequence of industrial vehicle collision, driver.

As I have said, I am satisfied Dr Phillip is a highly credentialled, experienced and expert pathologist. The Defence called evidence and tendered material, all of which became exhibits. Clearly, the Defence relies heavily on the report and evidence and conclusions of Professor Duflou. Duflou's report dated 30 October '22 became exhibit 22. Cuddihy and Ryan each gave evidence of relevant events in the drift on the 20th of February '19. Duflou and Phillips are pathologists who each gave evidence about the cause of death. They do not agree. They also give evidence about the deceased's injuries.

I have regard to all of the evidence, which in addition to oral evidence, including voluminous documentary evidence, some of which was highly technical and complicated. As earlier observed, I have considered all of the evidence in reaching my decision. Mr Cameron Cuddihy – he gave evidence that on the 20th of February '19, he was employed at Moranbah North Coal Mine by Anglo Coal. That day, he was driving a loader, a huge piece of mine machinery. He was driving the loader out by – that is, out of the mine, heading towards the surface in the drift where Hardwick had parked his grader.

Cuddihy's evidence is fundamentally important to the prosecution case. It relies on him for evidence on a number of issues. He said that the last time he saw the deceased, the deceased was in the vicinity of manholes 20 to 22, as was the grader. That after he had driven completely past Hardwick, he looked back and saw Hardwick standing uninjured in the drift, in the vicinity of manholes 20 to 22. That is, loader did not Hardwick that day. Consequently, the prosecution relies heavily on Cuddihy to prove that after Cuddihy's loader had exited the area, Hardwick was uninjured and only the grader remained in the drift, in the vicinity of Hardwick.

The prosecution case is that the grader struck and killed Hardwick when it rolled uncontrollably back down the drift at ever increasing speed, after its park brake failed when Hardwick parked the grader in the drift at about manhole 20 to 22. It says that it is the only plausible explanation on the evidence; the only rational interest – sorry, inference available. The Defence has advanced what it describes as a plausible alternative theory that the loader struck and killed Hardwick unbeknown to Cuddihy. The Defence does not argue that the Court would be satisfied beyond reasonable doubt the loader struck Hardwick.

It argues that on the evidence, it is a reasonable inference open on the evidence consistent with innocence and is relevant to whether the Court could be satisfied beyond reasonable doubt the grader struck and killed Hardwick, which is the central issue. And whether there is open on the evidence, only one inference, and that being an inference consistent with guilt. The Defence challenges the credibility and reliability of Cuddihy. I am satisfied beyond reasonable doubt that it became increasingly obvious during Cuddihy's evidence that he had been and still was deeply affected and traumatised by the death of Hardwick.

I am also satisfied beyond reasonable doubt he has some mental health issues he was dealing with following the death. I am satisfied beyond reasonable doubt that both of these things have adversely affected his ability to accurately recall the events of the 20th of February '19. Mr Holt identifies some internal inconsistencies in Cuddihy's evidence, especially in relation to him seeing Hardwick after the loader has passed him. Mr Holt submits Cuddihy gave conflicting evidence and highlighting when Cuddihy was interviewed on the day following the incident by investigators, he did not tell them about seeing Hardwick after the loader passed.

Mr Trevino for the prosecution submitted there was evidence Cuddihy did tell the investigators of seeing Hardwick after the loader had passed, in addition to Hardwick's – sorry, to Cuddihy's evidence in Court. He referred to the following question and answer in Cuddihy's interview post-incident. Question by the investigator:

And notice any of the movements as to which direction Mr Hardwick took?

Answer by Cuddihy:

I didn't notice anything unusual, like I didn't particularly pay any attention. I just usually always look back to see if there's any other vehicles – you know, like a faster vehicle coming up behind you. And that's – and I didn't – I didn't notice any other vehicles in the portal. Didn't notice him do anything different or unusual, you know, any light signals or anything like that.

Mr Trevino refers to the final two sentences where mention is made of him, obviously referring to Hardwick. He also refers to subsequent cross-examination by Mr Holt at lines 32 to 47 at transcript 2. Whilst I accept those parts of the interview are capable as being interpreted as supporting Cuddihy on the one hand, I cannot however be satisfied beyond reasonable doubt exactly what Cuddihy was telling the investigators or what he recalls seeing. I am not satisfied beyond reasonable doubt those parts provide much support for Mr Trevino's contention. Cuddihy's evidence on this point I am satisfied is unclear.

In his interview and in his evidence I am satisfied Cuddihy made it clear that his intention to looking back after he says he had completely passed Hardwick was not to look at or for Hardwick but to check for other vehicles coming up behind him, something that was a serious safety issue for him driving a big vehicle in a narrow drift. Accordingly, his focus, I am satisfied beyond reasonable doubt, in those circumstances would not have been on Hardwick or where he was or what he was doing. His focus and his attention would have been on the things behind where he says Hardwick was, what was happening being Hardwick.

I am further satisfied beyond reasonable doubt that at that time when Cuddihy stopped in Hardwick's vicinity in the drift there was no need for him to be closely focusing on exactly where he was, that is to say near what manhole. It was only later, I am satisfied, after hearing of the tragic death of Hardwick which has so traumatised him he was called upon to recall precise details such as when and where. His evidence before me was, of course, some three years after the incident. As the quote referred to just a moment or two ago records, he also said in that interview when dealing with looking back:

I didn't particularly pay any attention.

The evidence of Mr Ryan, another coal miner who was in the drift runner hit by the grader, contradicts Cuddihy's evidence, in my view, in relation to manhole 20 or 22. I deal with Ryan's evidence shortly, but I found him to be an honest and reliable witness who gave honest and reliable evidence, rather. He was an impressive witness. I am satisfied Ryan's evidence is supported by other evidence, including the location of the deceased's light, the positioning of the air hose, the indent on the drift wall at or near manhole 30, wheel parts being located on the drift floor at about manhole 30. I am satisfied that there is no independent support for Cuddihy's evidence as opposed to the other evidence supporting Ryan. In any conflict between the evidence of Cuddihy and Ryan I prefer and accept the evidence of Ryan beyond reasonable doubt. Him, I am satisfied was an honest and reliable witness who gave

honest and reliable evidence. I cannot be so satisfied beyond reasonable doubt in relation to the majority of Cuddihy's evidence.

Cuddihy also gave evidence of the independent movement of the rear section of the loader when it is turning, moving or pulling out. I am satisfied beyond reasonable doubt that on the relevant day the loader operated by Cuddihy had a rear section which, when the loader was turning, moving or pulling out to drive away, would swing left or right depending on direction of travel as part of its normal operation. I am satisfied the loader was a very big piece of machinery.

I am also satisfied beyond reasonable doubt that when the loader pulled out to its left into the drift on the day in question to continue its journey to the surface after Cuddihy had stopped and spoken to Hardwick this independent rear section of the loader would have or, at the least, could have moved to its right, away from the centre of the drift towards the wall of the drift and towards Hardwick. For all of the reasons earlier referred to, I cannot be satisfied beyond reasonable doubt that Cuddihy is a reliable witness. I wish to make it clear I am not concluding that Cuddihy was telling lies in his evidence or that he is dishonest.

I am, however, satisfied beyond reasonable doubt that his recollection is flawed and unreliable. He was, I am satisfied, trying his best. I can give little weight to his evidence other than his evidence about the independent movement of the rear of the loader, which falls into a different category of evidence. I cannot be satisfied beyond reasonable doubt on his evidence that when he and the loader he was operating that day drove away from the vicinity of Hardwick and passed him he saw when looking back Hardwick standard and uninjured in the vicinity of manhole 20 or 22.

Turning now to Mr Ryan, Scott Ryan was the driver of the drift runner travelling outbye. He had stopped the drift runner at manhole 36 to cool down its engine. He impressed me as an honest and reliable witness who gave honest and reliable evidence. I am also satisfied he was a level headed man who, despite the tragic and disturbing circumstances unfolding around him, remained relatively calm, keeping his emotions in check and that he maintained his focus. He was, I am satisfied, a good man in a crisis.

I am satisfied beyond reasonable doubt that he was able in his evidence to give a reliable account of what he saw and did. I am satisfied on his evidence beyond reasonable doubt that (1) he first saw the grader parked further up the drift towards the mine interest, that is outbye. Secondly, at that stage the grader was no moving. Thirdly, that at that stage the grader was about 100 meters outbye from him – that is away from him – at manhole 36. Fourthly, the distance from manhole 36 to manhole 30 is approximately 109 metres whilst the distance from manhole 36 to manhole 22 is approximately 259 metres, more than double the distance of 100 metres earlier referred to by Ryan.

Fifthly, shortly after seeing the parked grader Ryan saw a wheel coming down the drift followed by the grader itself, which then collided with the drift runner. Sixthly,

he next saw a cap light, which on other evidence I am satisfied beyond reasonable doubt was Hardwick's, about 100 metres away from him towards the entrance. Nextly, at that time Ryan would have had to have been further down the drift than his original position on account of the drift runner being pushed upon impact by the grader, but by an unknown distance. Upon investigating the light he discovered the body of Hardwick near the cap lap close to manhole 30. Other evidence which I accept beyond reasonable doubt discloses obvious marking and scarring of the drift wall at manhole 33 and the detached wheel of the grader referred to by Ryan at or near either manhole 33 or 34.

The evidence discloses, other than that described by investigators, as insignificant drift wall damage outbye of manhole 30 does not disclosure any relevant drift wall damage. I am satisfied beyond reasonable doubt during an inspection of the grader post incident the Grader was found to have had its hose attached to the air intake, which was open. I am satisfied beyond reasonable doubt the only inference available from this evidence is that air was being pumped into the grader. I am further satisfied beyond reasonable doubt that at various points along the drift air taps had been installed for the purpose of putting air into machinery such as the grader in the drift. I am further satisfied that this air taps are located at manholes 30 and 22.

I accept that on the one hand an air hose being available at manhole 22 is consistent with Cuddihy's evidence and supportive of his evidence that the grader was at manhole 20 or 22. On the other hand I am satisfied that the preponderance of evidence favours and is consistent with the air tap at manhole 30 being used. The evidence discloses, I am satisfied beyond reasonable doubt, the remains of the air hose being located near manhole 30, it having been, it would appeared, sheared off some 50 or so metres further down the mine from manhole 30 but about 200 metres inbye of manhole 22. I am satisfied beyond reasonable doubt this evidence, which I accept beyond reasonable doubt, is consistent with and supports the evidence of Ryan and is consistent with a conclusion that the grader was stopped near manhole 30 before it started its roll back down the drift.

I am satisfied beyond reasonable doubt there is evidence which I accept inconsistent with the evidence of Cuddihy and provides little or no support for his evidence. I also satisfied beyond reasonable doubt that evidence is inconsistent with the grader being stopped or parked at or near manholes 20 or 22 immediately prior to the grader commencing its roll. In his written submissions Mr Holt submits at paragraph 196 at page 51 the following:

> *It is highly unlikely that the grader rolled backwards from manhole 20 some 280 metres down a narrow drift without hitting the drift wall until manhole 33, especially given the grader was initially parked on the left-hand side of the drift looking outbye.*

I accept the evidence of Ryan beyond reasonable doubt. Where there is any conflict between the evidence of Ryan and the evidence of Cuddihy I accept Ryan's evidence beyond reasonable doubt to that of Cuddihy.

Dr Phillips is the acting chief forensic pathologist in Queensland and conducted Hardwick's autopsy. Her revised cause of death was multiple injuries due to industrial vehicle accident operator. Her opinion is that the injuries are consistent with an impact injury not dissimilar to injuries typically seen in a high speed car crash. Dr Phillips does not accept a compression injury pressed by the defence. Whilst in cross-examination she agreed the overall injuries may have been consistent with a compression injury, I am satisfied that it would be a considerable overreach to find that the doctor clearly and unequivocally conceded compression injury. Dr Phillips is a vastly experienced, high qualified and credentialed pathologist. I found her to be an honest and reliable witness who gave honest and reliable evidence. She was an impressive witness. Dr Phillips described the linear bruising across the deceased's torso under the chest as the most serious of the injuries and the underlying injuries under that.

The prosecution case is that the runaway grader, a heavy piece of machinery, traveling at some speed struck and killed the deceased; an impact collision. The defence case is firstly the injuries sustained were as a result of a compression/crushing type of force, not an impact injury. Secondly, relying heavily on the evidence of Professor Duflou, the Court could not be satisfied beyond reasonable doubt that the cause of death was as a result of an interaction with the grader. And thirdly, that no part of the grader could have caused the most significant of the deceased's injuries, the injuries under the linear bruise. In her evidence Dr Phillips opined that the safety bar associated with the grader's driver's cage could have struck the deceased and caused the significant under chest bruising and injuries.

Dr Phillips was never provided with the opportunity of a site inspection or with the opportunity of inspecting the grader or another near identical grader or of inspecting the loader or one similar. On the other hand, Professor Duflou did visit the mine, did conduct a site inspection and did inspect a near identical grader. Consequently, I am satisfied beyond reasonable doubt Dr Phillips was at a considerable disadvantage in not having the opportunity of a site inspection and vehicle inspection when compared to Professor Duflou when discussing and considering causation, in particular when considering if the swinging cage bar could have caused Hardwick's linear bruising and the very significant underlying injuries.

In summary, Professor Duflou, whom I am satisfied had those opportunities, conducted a thorough examination of a similar grader and its parts, concluded that the swinging arm could have caused a linear bruise but could not have caused the significant underlying injuries sustained by Hardwick. Whether or not the swinging bar could have caused the underlying injuries is of fundamental importance. I am satisfied beyond reasonable doubt that Professor Duflou, having visited the site and inspected a near identical grader as Hardwick's grader and its parts, had a considerable advantage over Dr Phillips in relation to the causation, he having had the opportunity of inspecting the type of grader involved and Dr Phillips not having had that opportunity.

Professor Duflou gave evidence and, as with Dr Phillips, I am satisfied he is a vastly experienced pathologist, highly credentialed, highly qualified pathologist who was an honest and reliable witness who gave honest and reliable evidence. As has already been discussed, I am satisfied beyond reasonable doubt he had visited the mine, conducted a site inspection and, in particular, he closely inspected a near identical grader to the one operated by Hardwick at the relevant time. I am also doubted beyond reasonable doubt that there was no relevant or substantial differences between the grader inspected by Duflou and the grader used by Hardwick on the relevant day. I am satisfied that as Duflou had the opportunity of personally inspecting the site and the grader, he had a considerable advantage over someone who did not have that opportunity as far as conclusions are concerned.

The professor paid particular attention to the swinging arm of the operator's cabin and concluded, I am satisfied beyond reasonable doubt, that it could not have caused the underlying fatal injury sustained by the deceased as not enough force could be generated. I am satisfied beyond reasonable doubt that while the Court had the benefit of the evidence of two vastly experienced and highly qualified pathologist, one having examined the deceased and his injuries at autopsy, admittedly, but the other having inspected the relevant site and also the type of grader involved, such inspection in the context of this case being of fundamental importance, I am sanitised I am able to give the evidence of Professor Duflou on the question of causation greater weight on this occasion than to the opinion of Dr Phillips.

I will turn to what I refer to as "the loader hypothesis". As is obvious and has been so throughout and discussed in varying degrees already, the defence seriously challenge the prosecution allegation that the runaway grader interacted with, that is struck, and killed the deceased in the drift. Further, the defence puts forward a case, as Mr Holt describes it, a plausible alternate source of the injuries sustained by Mr Hardwick. That alternate case being that the deceased's injuries and death could have been caused by the loader. The prosecution case is quite straightforward, really. The Court would be satisfied beyond reasonable doubt that the grader in some way interacted with and struck the deceased, inflicting severe injuries which ultimately killed him. The grader struck the deceased, he says, as a consequence of the grader's brakes failing which caused the grader to roll back down the drift at an ever increasing speed.

The grader's brakes failed, it says, as Anglo, and as I have found, was in breach of the Act. The prosecution submits the defence's alternate theory fails almost immediately as the Court would be satisfied beyond reasonable doubt that the loader was not in the drift or in the vicinity of the deceased when he was struck and, further, the Court would be satisfied that Cuddihy had seen the deceased alive and standing after the loader had completely passed him and had exited the area on the prosecution case.

The prosecution urges, therefore, the Court would be satisfied beyond reasonable doubt that only the grader and no other vehicle was present in the drift at the relevant time and only it was capable of killing Hardwick, that being the only rational

inference available. However, to be so satisfied beyond reasonable doubt the court would have to accept Cuddihy as an honest and reliable witness, in my view, a witness who gave honest and reliable evidence. I have earlier found beyond reasonable doubt Cuddihy was not a reliable witness. Specifically on his evidence I cannot be satisfied beyond reasonable doubt that after the loader had completely passed the deceased, as he had said, he then saw Hardwick standing and uninjured.

I cannot be further satisfied beyond reasonable doubt consequently on the evidence as follows. That at the time the deceased was struck and killed only the grader was in the drift, incapable of hitting and killing him. Next, that the loader could not have interacted with the deceased, thereby causing his injuries and death. Next, it is not necessary for me to find beyond reasonable doubt the loader did strike and killed the deceased. What I have to determine in this case is clear: whether or not I am satisfied beyond reasonable doubt the grader caused his death.

On the evidence I am satisfied beyond reasonable doubt as follows. That shortly prior to his death Hardwick parked the grader he was operating on that day in the drift in the vicinity of manhole 30 and not in the vicinity of manhole 22. That it is highly probable he stopped his vehicle there in order to cool it down. Cuddihy parked the loaded he was operating that day in the drift in the vicinity of manhole 30 in the vicinity of Hardwick. The loader would have been quite close to Hardwick, given the narrowness of the drift made even narrower by the presence of the grader and the loader. Both the grader and the loader are very big pieces of machinery. That due to its design the rear section of the loader swings out left or right, depending on direction of travel.

I cannot be satisfied beyond reasonable doubt that after he and the loader had completely passed Mr Hardwick, Mr Cuddihy looked back and saw the deceased standing, uninjured. I cannot be satisfied beyond reasonable doubt at the time when the deceased received his fatal injuries the grader was the only piece of machinery in the drift and in the vicinity of the deceased which could have caused his fatal injuries. I cannot be satisfied beyond reasonable doubt that at the relevant time the loader was not in the drift.

I am satisfied beyond reasonable doubt the injuries sustained by the deceased were consistent with a compression type injury. I am satisfied beyond reasonable doubt the cause of death was multiple injuries due to industrial vehicle accident operator. I am satisfied beyond reasonable doubt the most significant of the injuries sustained by the deceased were the injuries underlying the linear bruise across the deceased's torso just below his chest. I cannot be satisfied beyond reasonable doubt the injuries sustained by the deceased were consistent with an impact type cause. I cannot be satisfied beyond reasonable doubt the injuries to the deceased were caused by the safety bar swinging into his chest or hitting his chest.

I am satisfied beyond reasonable doubt the deceased's injuries are not consistent with being caused – sorry, are not inconsistent – I will start that one again as it is an important finding. I am satisfied beyond reasonable doubt the deceased's injuries are

not inconsistent with being caused by him being compressed between a heavy solid object and the drift wall. I am satisfied beyond reasonable doubt the injuries to the deceased were not inconsistent with injuries expected to be caused by the deceased being compressed between something like the swinging rear section of the loader and the drift wall.

I am satisfied beyond reasonable doubt the loader hypothesis, so called, it at the least a possible hypothesis consistent with innocence. Further, the loader hypothesis is a reasonable hypothesis consistent with innocence. There is therefore open on the evidence, I am satisfied beyond reasonable doubt, a rationale inference consistent with innocence. I cannot be satisfied beyond reasonable doubt that the only rationale inference open on the evidence is an inference consistent with guilt.

I cannot be satisfied beyond reasonable doubt the grader caused Mr Hardwick's injuries or death. I cannot be satisfied the prosecution has proven each and every element of the offence beyond reasonable doubt. Consequently, I cannot be satisfied beyond reasonable doubt that Anglo's contravention of section 34 of the Coal Mining Safety and Health Act 1999 in relation to the grader caused the death of Bradley Allister Hardwick, a cold mine worker. I find Anglo, Coal Moranbah North Management Pty Ltd not guilty of that charge. The defendant company is discharged on that charge.

I wish, however, to be very clear that I have not found and do not find that Mr Cuddihy caused the death of Mr Hardwick. What I have found is that I cannot be satisfied beyond reasonable doubt the grader caused his death. Nothing more. It would be impermissible and totally beyond any finding I have made here to conclude that I have found Mr Cuddihy responsible. I have not and I do not. Now, I will hear submissions on the question of penalty in respect of contravention of the Act. Ready to proceed with that aspect.

MR UNDERWOOD: We're not, your Honour.

HIS HONOUR: Right.

MR UNDERWOOD: The parties are agreed to a schedule for the exchange of written submissions on penalty. In addition, your Honour, I am instructed to seek costs on the conviction. It may be that the appropriate way of moving forward is that this ought to be amended slightly so that the date on which written submissions are to be exchanged also be the date on which submissions on costs are to be exchanged. The consent order contemplates that the hearing for the penalty submissions and the cost submissions take place on a date to be fixed. If your Honour is minded, I will hand that draft order up to you now.

HIS HONOUR: And, Ms Freeman, with your agreement.

MS FREEMAN: Yes. Thank you, your Honour.

HIS HONOUR: All right.

MR UNDERWOOD: Thank you, your Honour.

HIS HONOUR: Thanks, Mr Underwood.

MR UNDERWOOD: Thank you, your Honour.

HIS HONOUR: I'll read it. So you wish to amend those dates? Is that what I understood?

MR UNDERWOOD: Pardon me, your Honour. I wish to amend paragraph 1 so that after the words, "Written submissions regarding penalty," the words be added, "And costs," a likewise amendment to draft order 2 after the word "penalty", "And costs". And then in relation to order 3, that the words be inserted in the blank space, "On a date to be fixed." And it's contemplated, your Honour, that the parties will liaise with your Honour's Clerk as to a date that is convenient both for the court and the parties.

HIS HONOUR: Ms Freeman, nothing to add.

MS FREEMAN: No. Thank you, your Honour. Just in relation to the issue of costs, I'm just mindful of those cases that say your Honour can only make that order - - -

HIS HONOUR: There's been a recent decision on that, I think, that it's not longer – the Court of Appeal said it's not longer, as I understand it, that issue.

MS FREEMAN: Yes.

HIS HONOUR: There's no – that's not an issue that – well, sorry. It's you taking that point, wouldn't it?

MS FREEMAN: Well, I just - - -

HIS HONOUR: But you're not going to be taking that point.

MS FREEMAN: Well, no, your Honour. I mean, your Honour hasn't made any formal orders about the complaint apart from indicating your Honour's decision on liability. So your Honour is yet to determine penalty.

HIS HONOUR: Yes.

MS FREEMAN: And your Honour can determine costs as part of that, I would have thought.

HIS HONOUR: But – yes. Well, my understanding of the law now is that the earlier concerns about - - -

MS FREEMAN: One-five-nine and – yes.

HIS HONOUR: - - - yes, are no longer as they were and that the costs application doesn't have to be heard and determined at the same time.

MS FREEMAN: Yes. Thank you, your Honour. I don't wish to be heard any further.

HIS HONOUR: But I – however, it may be a different set of circumstances if the defence is going to at a later time argue that what occurred here today means that, as costs were not ordered and argued, etcetera, today, that the prosecution can't seek or be granted costs.

MS FREEMAN: No, that's not the position I'm agitating.

HIS HONOUR: Yes, I didn't think it would be, but - - -

MS FREEMAN: No, I was just generally just making sure that we weren't ruling that out. But I don't think we need to concern ourselves with that point at this point in time. Thank you, your Honour.

HIS HONOUR: All right. All right. Thank you. Now, I think that's a suitable arrangement and so I make that order as per draft signed by me and I will obviously place it on the papers on the file. But essentially it's adjourned to the registry for further dates to be allocated at some time into the future.

MR UNDERWOOD: As your Honour pleases.

HIS HONOUR: Excuse me. Thank you. Mr Underwood, any other orders you are seeking today? Anything further.

MR UNDERWOOD: No, your Honour.

HIS HONOUR: Ms Freeman.

MS FREEMAN: No. Thank you, your Honour.

HIS HONOUR: Thank you, everyone. Good morning. Adjourn the court.