

Charges against Carborough Downs mine operator to proceed years after miner Brad Duxbury was killed

ABC Tropical North / Melissa Maddison

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A permanent memorial in Moranbah for the coal mine workers killed on the job. (ABC Tropical North: Holly Richardson)

Paperwork filed in the wrong Queensland court has almost resulted in charges over a fatal coal mining incident being dropped.

Brad Duxbury, a 57-year-old grandfather from Ipswich, died when he was crushed by falling coal at the Carborough Downs Mine near Moranbah in 2019.

Key points:

- The president of the Industrial Court of Queensland has ruled charges against a mine

The mine operator and two senior officials were charged in 2021 with breaching the Coal Mining Safety and Health Act (CMSH Act).

However lawyers for those charged successfully argued in the Mackay Magistrates Court in late 2021 that the case against them should be dropped because the paperwork was filed in the wrong court.

About 12 months after the incident, the summons stated Carborough Downs Coal Management and the officials appear in the Mackay Magistrates Court rather than the Industrial Magistrates Court, which has jurisdiction over cases of this kind.

Those charges were the only ones filed over Mr Duxbury's death.

But after months of legal argument, appeals, and hearings, the president of the Industrial Court of Queensland ruled this month the matters could proceed.

'Untold problems' from technicality

Justice Peter Davis ruled that while errors made by previous Work Safety and Health prosecutor Aaron Guilfoyle caused "untold problems", the summons was valid.

Justice Davis also found that the earlier ruling by Acting Magistrate Athol Kennedy striking out the charges was beyond the court's jurisdiction and therefore invalid.

"The wording of each complaint ... identifies the safety obligation owed and how it is breached. Importantly, the provision alleged to be offended against is specifically identified as a section of the CMSH Act," he said.

Justice Davis has ruled that the charges against Carborough Downs Coal Management and site senior executive (SSE) Russell Clive Uhr be heard in the Industrial Magistrates Court on a date to be set.

The charges against the other SSE, Jeremy David Futeran, have been dismissed.

operator and one site executive will proceed

- It follows years of legal argument over a technicality in the wording of the original summons
- A date for the hearing has not been set



Brad Duxbury was killed at the Carborough Downs Mine in 2019. (Supplied: Facebook)

The former Work Safety and Health prosecutor, Aaron Guilfoyle, resigned in January 2022.

The charges will now be brought by the new Work Safety and Health prosecutor, Simon Nicholson, who took over the role in October last year.

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