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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
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QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

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MAGISTRATES COURT

HARTIGAN, Magistrate

MAG-00118205/20(1)
MAG-00118190/20(3)

**OFFICE OF THE WORK HEALTH
AND SAFETY PROSECUTOR**

Complainant

and

**MIDDLEMOUNT COAL PTY LTD and
DARREN LEE CUTHBERTSON**

Defendants

MACKAY

2.00 PM, TUESDAY, 8 AUGUST 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.

HER HONOUR: Middlemount Coal Pty Ltd has pleaded guilty to one charge against section 34 of the Coal Mining Safety and Health Act 1999, namely failing to discharge an obligation placed on it by section 42(1)(e) of that Act. The obligation was to ensure the site senior executive for the mine at the relevant time, Mr Darren
5 Cuthbertson, developed and implemented a safety and health management system for all persons at the mine. Pursuant to section 13 of the Penalties and Sentences Act, I take into account the plea of guilty entered by Middlemount Coal. By its plea of guilty it has taken responsibility for its failure and cooperated with the administration of justice. Resolution of the matter has obviated the need to call 47 witnesses over a
10 period of three weeks. Middlemount Coal Mine's plea of guilty will be reflected in a lesser fine than would have been imposed after an unsuccessful trial. I do consider it a timely plea.

The complaint has been amended in a significant way. It no longer alleges the
15 failure to discharge the obligation placed on it by the Act caused the death of Mr Routledge. The particulars have also been amended in a significant way, namely paragraph 23 and 24 have been removed. They said the failure caused the death of Mr Routledge by wrongly exposing him to the hazard that killed him and, had such a ground control management plan existed and been followed, workers, including Mr
20 Routledge, would have been excluded from the area when Mr Routledge was working when the echelon – sorry, where he was working when the echelon wall collapsed.

A submission was sent on the 16th of May 2022 in relation to a plea of guilty being
25 offered in the same terms to which has now been accepted. That submission was rejected on the 30th of September 2022. A report from Prime Global was commissioned and received on the 15th of February 2023. A further submission was made on the 14th of July 2023, which was accepted on 1 August 2023. The report
30 from Prime Global was said to have clarified the prosecution case significantly and it was the expert's opinion that there systems in place and if they were followed, the death of Mr Routledge could have been prevented.

The only purposes so which sentences may be imposed on an offender are set out in section 9(1) of the Penalties and Sentences Act. Here, sections 9A, C and D are the
35 most relevant. Namely, to punish the offender to an extent or in a way that is just in all of the circumstances, to deter the offender or other persons from committing the same or similar offence and to make it clear that the community acting through the court denounces the sort of conduct in which the offender was involved. In sentencing Middlemount Coal Pty Ltd I must have regard to the principles set out in
40 section 9(2) of the Penalties and Sentences Act. For obviously reasons, imprisonment is not an available sentencing option. The maximum penalty for the offence before the court as at 26 June 2019 was 5000 penalty units. A penalty unit at that stage being \$130.55 or \$652,750.

45 The nature of the offence and how serious it was must be considered. There is divergence as between the prosecution and defence about the objective seriousness of the offence before the court. The divergence informs the penalty that each are

seeking. Prosecution, whilst acknowledging the penalty provision, section 38(e) of the act, is the lowest penalty provision for an offence of this kind, submits that it is a serious example of a failing in that category. Defence disagrees when on looks at the failing that forms the basis of the offence.

5

Primarily, the prosecution submits a gap in the safety and health management system of Middlemount Coal Mine was identified in July 2018 by the inspector of mines and conveyed to Darren Cuthbertson, the site senior executive, and other key person at the mine advice was given about how to fix that gap and as at 26 June 2019, some 12 months later, that gap had not been rectified. Namely, the ground control management plan was in draft form and was not implemented.

10

Defence agrees that there was a gap, a failure in the additional aspect of the safety and health management systems that was in place, namely a lack of an implemented ground control management plan, but asks me to draw a distinction between this case and cases where there was a complete lack of a system and thereby a lack of commitment to safety.

15

The background to the offence is as follows. On 16 June 2019 a blast was conducted in the southern terrace pit of Middlemount Coal Mine in order to continue coal mining at Strip 19. Mining activities commenced in or around Strip 19 during the night shift on 16 June 2019 in which instruction was given to relocate into new blast. According to particular 6 of the complaint, subsequent assessments were undertaken of that area of the mine after the blast was completed and, amongst other things, identified a consistent 2.5 to 3 metre of hanging rock on the high wall and that this would likely be a geotech issue.

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According to particular 7 of the complaint, mining activities in and around Strip 19 continued daily until the day shift of 26 June 2019. According to particular 8 of the complaint, on 26 June 2019 mine worker David Routledge was tasked with operating an excavator in and around Strip 19. The 12 hour dig plan for that shift assigning him excavator 46 to continue double benching to the east to expose next block of coal. The dig plan has been reproduced at paragraph 46 of the agreed statement of facts.

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According to paragraph 47 of the agreed statement of facts and it is clear from the dig plan itself, the dig plan makes no reference at all to the risk posed by the eastern echelon and has no entry in the areas of awareness section of the instruction. A greed trigger action response applied to the task. The plan highlights the area in which excavator 46 was to work and which was immediately adjacent to the eastern echelon. According to paragraph 48 of the agreed schedule of facts, a dozer pushed dig plan for the same day had excavator 65 assigned. Its plan set out the task of conventional push, scale high wall as we go down. Digger 46 will continue mining a 35 metre strip against end wall. Maintain safe separation. Areas of awareness were noted on this push dig plan as hang up, full reach on echelon.

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According to paragraph 49 of the agreed facts, Graham Maleon was the incoming open cut examiner on 26 June 2019 day shift. It was his first day back at the mine along with crew B after a seven day break. He told investigators that nothing was raised at the open cut examiners handover or at the pre-start meeting regarding any hazards at Strip 19 and he could not recall anything specifically raised about any hang up or cling on on the echelon wall. He conducted an inspection himself after the pre-start meeting that morning.

At approximately 12.21 pm on 26 June 2019 the eastern echelon wall of Strip 19 failed. Material collapsed from the wall into the pit. Excavator 46 was located near the foot of the intersection between the eastern echelon wall and the rear highball and was engulfed by the falling material. Mr Routledge was inside excavator 46 at that time, which was crushed by falling material and he was killed. I mention this only by way of background. The circumstance of aggravation to the charge no longer forms part of the complaint before the court against Middlemount Coal Pty Ltd.

The investigation that followed Mr Routledge's death revealed that the mine was lacking in an implemented ground control management plan. I make it clear that the prosecution does not allege that this failure was the cause of Mr Routledge's death, as per paragraph 2 of the agreed statement of facts. The draft and unimplemented ground control management plan has been referred to by defence as an additional document to the principal hazard management plan that was in place at the time, which was part of the overall safety and health management system that was in place as at 26 June 2019 at Middlemount Mine. In this regard there was a gap in the overall safety and health management plan, rendering it inadequate. This is the basis before the charge – this is the basis of the charge before the court. And by way of plea of guilty there is an acknowledgment of this failure and acceptance. My attention has been drawn by defence to paragraph 38 of the agreed schedule of facts that says:

Overall, the safety and health management system in place at the mine was adequate to manage the risks associated with drill and blast activities and had the requirements of the safety and health management system been complied with by individuals, the incident concerning the echelon wall failure could have been avoided or adequately managed to ensure the safety of personnel.

I have been urged by the prosecution to not read this paragraph in a vacuum. Although, I should not, that it is not the contention of defence that it was adequate, a plea of guilty has been entered on the basis that it was not. It was said at paragraph 39 of the agreed schedule of facts that notwithstanding this – that is a reference back to paragraph 38 – notwithstanding this, the systems in place at Middlemount Mine did not meet the standard expected of a safety and health management system in that components were not contained in a single document which guided the risk management process for ground control. The intention at Middlemount Mine was the guiding document was to be a ground control management plan which was separate to the principal hazard management plan. And a consequence, the principal hazard management plan was less extensive than it would be expected to be if the

risk management process was to be solely governed by the principal hazard management plan. It continues on at paragraphs 40 and 41 of the agreed schedule of facts to say:

5 *This would have met expected standards if the ground control management plan had, in fact, been compiled as planned. The fact that it was in draft form meant there was a gap in the system for managing strata control. This in turn meant that although no other components of the system were in place – sorry. This in turn meant that although other components of the system were in place,*
10 *there was no a coordinating document ensuring that the separate components fed into each other.*

Paragraph 45 of the agreed statement of facts says:

15 *Ultimately, a ground control management plan was necessary to provide for better management of the blast design processes of the mine, better management of the pre-split line and the echelon wall prior to the blast, better implementation of geotechnical inspections, better communication of the potential for geotechnical hazards to exist, better use of trigger action response*
20 *plans and classification of the level associated with the hazard and better development of a hazard mitigation plan.*

The prosecution submits it is important to look at Middlemount Mine’s interactions with the inspector of mines prior to 26 June 2019 in coming to a conclusion about the
25 objective criminality of the offence. On 27 June 2018 Mr Cullinan, an inspector of mines, attended the Middlemount Coal Mine to investigate a complaint that had been reported to Ms Vitticombe of the inspectorate. Within this complaint there was a concern pertaining to ground control management at the mine. Mr Cullinan reviewed the principal hazard management plan 1, geotechnical management plan
30 that was in place at that time. Mr Cullinan noted a number of deficiencies in the plan, including the mine’s safety and health management system does not contain any other documents for the ground control management. Mr Cullinan issue a directive, stating:

35 *The senior site executive –*

Sorry:

40 *The site senior executive must review his safety and health management system in relation to ground control management. The review must address but not be limited to the issues highlighted in the mine record entry.*

The directive was required to be completed by 31 July 2018. On 17 and 18 June 2018 an inspection of the mine was conducted by Ms Vitticombe and Mr Cullinan.
45 Ms Vitticombe identified numerous ground control risk management issues. These issues were communicated to the site senior executive Mr Darren Cuthbertson and other key persons at Middlemount Coal Mine, including an independent geotechnical

expert engaged by Middlemount Coal Mine. A mine record was made of the meeting, outlining what needed to be done. Paragraph 21 of the agreed schedule of facts says this:

5 *There is no geotechnical model for Middlemount Mine. A geotechnical model forms the basis for developing a principal hazard management plan for ground control as it provides detailed risk profiles for each area of the mine plan and develops acceptable mine design criteria and mining methods. Again, this is a basic and standard practice across the mining industry and must be fully*
10 *implemented at Middlemount Mine. For reference I have attached to this mine record entry published information specifying the fundamentals of slope design and the slope design process. A geotechnical model includes geology, structure, rock mass and hydrology data.*

15 *We discussed the principal hazard management plan for ground control and the underlying broad-brush risk assessment for this principal hazard management plan. A ground control management plan is often the subordinate document that sits under the principal hazard management plan and includes the detailed plan for effective ground control risk management. We discussed*
20 *the content, structure, framework, naming conventions, DSX file naming conventions, document control and auditing aspects of a ground control management plan. For reference I have attached to this mine record entry pages from published documents detailing the type of information in a ground control management plan, the fundamentals of slope design and a typical table*
25 *of contents for a ground control management plan.*

It goes on to state the published references, which I will not go into. A revised directive issued on 18 July 2018 with a compliance date of 31 October 2018. This is set out in paragraph 22 of the agreed schedule of facts.

30 *Current directive ground control issues by inspector of mines Mr Graham Cullinan. This directive due date will be extended to 31 October 2018 for documented review and development of the principal hazard management plan geotechnical and subordinate ground control management plan. Detailed*
35 *content of the principal hazard management plan, ground control and the ground control management plan is discussed within this mine record entry and thereby should be used as reference during the development and review of the hazard management plans. Mr Daren Cuthbertson indicated that the full and effective implementation of these reviewed system will be completed and*
40 *audited in early January 2018.*

Which is a mistake. It should have read “2019”. On 27 November 2018 a teleconference occurred between Ms Vitticombe, Mr Cullinan and the site senior executive Mr Darren Cuthbertson and other key persons at Middlemount Coal Mine.
45 An update was provided about progress that had been made. The compliance date for both directives was extended to 31 March 2019. On 21 March 2019 another teleconference occurred between Ms Vitticombe and senior site executive Mr Darren

Cuthbertson and other key persons at Middlemount Coal Mine. An update was provided about progress:

5 *Matters discussed included the principal hazard management plan for ground control, that is the geotechnical principal hazard management plan has been rewritten and uploaded to the overarching safety and health management system and effectively implemented. The geotechnical principal hazard management plan includes revised trigger action response plans and a subordinate and more detailed technical document ground control management*
10 *plan.*

It then goes on to say that it will be completed by the end of the month, March 2019, and it is now used for guidance of all mine design, mine planning and operational plan. As can be seen, that principal hazard management plan for ground control
15 specifically pointed to a subordinate document, ground control management plan, which was only in draft and it was not implemented, rather than being contained in one document.

On 5 April 2019 site senior executive Mr Cuthbertson sent an email to Ms
20 Vitticombe, attaching his response to that record. And he set out a number of things that would be to be actioned as part of the ongoing development of the ground control management plan of Middlemount Coal. I was referred to paragraph 25 of the agreed schedule of facts, in particular by defence in response to a submission that a positive assertion had been made that it was completed and had been implemented.
25 What the email says on 5 April 2019 is that:

I would like to provide feedback regarding the postal mine record entry dated 21 March 2019.

30 Which is the record I just read out. The purpose of the mine record was to provide Middlemount an update addressing the two directives:

As part of the ongoing development of the ground control management of Middlemount Coal, the following are now to be actioned.

35 So there is reference in this paragraph to things that still need to be done:

*One. Continue information collection from manual measurement of open stand pipes and logging downward [indistinct] update the hydrological model to be completed by end of month June 2019. Drones are currently used for high wall mapping and other survey requirements. Real-time kinematic capability of the camera on the drone needs to be updated to include a point cloud grid for georeferencing. And the IDS radar make sentry unit is used on site continuously and approval for expenditure has been completed and submitted. Of course, all
40 other discussion points have been placed in the geotechnical principal hazard management plan and the ground control management plan and will be
45*

reviewed and updated as per the information collected and models reviewed in readiness for auditing in July.

5 The directives were closed out on 5 April 2019 as a result of the information that was provided by Middlemount Coal on 21 March 2019 and 5 April 2019. It is true to say that all of these interactions occurred before the incident that occurred on the 26th of June 2019. However, this is not a case where there was inaction or a lack of cooperation with the directives by Middlemount Mine. There was no cavalier approach to safety. There was action in the form of a settled geotechnical principal hazard management plan 1 and a draft ground control management plan.

15 In this regard defence specifically points to exhibit B of the affidavit of Keith Hayley sworn 7 August 2023 and filed the same day, namely a document entitled Geotechnical Principal Hazard Management Plan 1. It was signed off on by the site senior executer Darren Cuthbertson and Joe Hulen, process owner, on 24 October 2018. This document was developed and finalised as a direct result of Middlemount Coal Mine's interactions with the inspector of mines. I will not go into it in an detail, except to say that it is extremely comprehensive, spanning 13 pages of information that leaves out the first few pages that just say nothing. The plan outline processes pertaining the management of geotechnical principal hazards at the mine, including processes for the identification, mitigation and monitoring of these hazards. It was in place as at 26 June 2019.

25 An example of its contents can be gleaned from headings of sections contained in the plan, namely slope instability, prediction of geotechnical hazards, control of geotechnical hazards, trigger action response plans, planning, monitoring and mitigation process. This was to replace revision 8, which issued on 10 August 2017 before the inspector of mine's intervention. Revision 8 was not due for revision until 10 August 2019. It specifically referred to a ground control management plan, which is a subset document to this principal hazard management plan which provides further detailed guidance on all site systems relating to geotechnical management. This includes mitigation for all hazards that are not considered principal hazards.

35 The ground control management place was in draft form only. There is no evidence that it was finalised, implemented and distributed as at the offence date. The purpose of a ground control management plan is to facilitate an effective ground control risk management process. The plan is a document that typically contains details of geotechnical responsibilities at the mine, the basis for the slope designs, their implementation and associated monitoring system, identifying hazards, control procedures, risk management systems, identification of risk, communication protocol, permits, sampling and monitoring, accepted movement threshold values and formalised controls, and resources required, such as training, communication, review and audits, and trigger action response plans.

45 A ground control management plan where implemented functions as an overarching document detailing all relevant components and bringing them together, providing

the framework which controls when the various components are triggered and implemented. Paragraph 33 of the agreed schedule of facts states this:

5 *There is no industry standard for a strata control system as mine sites do not contain the exact same structure and layout for their strata control systems and the Act does not prescribe a standard strata control system, instead placing the onus on the mine operator and site senior executives to develop a system which is specific to the mine site. If there is not one in place, the geotechnical principal hazard management plan is to be more extensive.*

10

The ground control management plan developed as a result of the interactions between Middlemount Coal Mine and the mining inspector was in draft format only, substantially incomplete with no detail around the process for complying a geotechnical pit layout. A copy of the document is annexed to the written
15 submissions of the prosecution. It has been described as in skeleton form. It is common ground that the safety and health management system in place at Middlemount Mine as at 26 June 2019 contained the following relevant elements, which would generally be expected to be included in a safety and health management system:

20

*(a) A Principal Hazard Management Plan developed on the basis of risk assessment, Trigger Action Response Plans, Standard Operating Procedures developed on the basis of risk assessment, checklists for the drill and blast design process and training for personnel on hazard
25 identification.*

25

I have been referred to many safety systems that were in place Middlemount Coal Mine as at 26 June 2019 by Defence. Namely, a Ground Control Trigger Action Response Plan; a Radar Trigger Action Response Plan; Monitoring Conditions
30 Trigger Action Response Plan; Geotechnical or Stockpile Failure Trigger Action Response Plan; Ensuring the Safety of Persons On or Near Stockpiles or Coal Waste Dump Standard Operating Procedure; Operating Equipment on Stockpiles and Coal Waste Dump Standard Operating Procedure; Discharging Loads Standard Operating Procedure; Spoil Dumps and Excavated Faces Standard Operating Procedure;
35 Specification for Design and Construction of Mine Roads; Mine Standard Operating Procedure; and Reporting High Wall Compliance to Design Safe Work Instruction.

35

But for the gap in the safety and health management system that forms the basis of this charge by reference to the Geotechnical Principal Hazard Management Plan and
40 the systems I have just set out, I do agree that the Defence submission that the Middlemount Coal Mine had a sophisticated and robust safety and health management system in place as at 26 June 2019. The penalty imposed here must be proportionate to the failing that constitutes the charge. The penalty provision that applies to this offence, section 34E, is not directed at harm caused or exposure to
45 risk.

45

Defence draws my attention to the fact that the essence of the charge is Middlemount Coal Proprietary Limited's failure to have an overarching document, namely, a Ground Control Management Plan within its safety and health management system which outlines the mine's methods for controlling geotechnical hazards and
5 minimising risks in circumstances where the mine had such methods and processes in place within a number of different documents, but they were not consolidated into one overarching document called the Ground Control Management Plan. I am asked in the end result to distinguish this case from other cases where there has been a lack of system in place, or a general disregard and complacency towards worker safety.

10 With respect to the offender's character, Middlemount Coal Mine Proprietary Limited, section 11 of the Penalties and Sentences Act applies. Here I take into account that the offender has no prior convictions and has been operating since October 2009 with full production having commenced in July 2011. It has 338
15 workers and 148 contractors. It has made significant contributions to the community. It donates or sponsors 22 organisations in the community. I will not read them out in full. They are set out in section – sorry – in paragraph 29 of the written submissions of Defence, but just to name a few, the RACQ Cat Rescue, a helicopter rescue service for Rapid Response Search and Rescue in the Capricorn and Central Queensland regions; Child Safety Handbook, a handbook produced and
20 distributed by the Queensland Police Legacy which covers a variety of topics including personal space, diet and nutrition; Middlemount Road Safety campaign; Middlemount Netball Club; Middlemount Community Sports Association Gymnastics; Middlemount Junior Rugby League; Middlemount Community
25 NAIDOC Day celebrations; playgroups; a children's hospital foundation; and the Middlemount Fire Station. There is a number of others, but I will limit it to that.

Other contributions to the community include [indistinct] the Queensland
30 Rehabilitation Commissioner to demonstrate effective site rehabilitation work and discussing progressive rehabilitation challenges for the mining industry; completed the development of 64 hectares of rehabilitation and sediment control infrastructure and a further 50 hectares of rehabilitation work; and completed the installation of any quality and monitoring station in the Middlemount township. This is all sworn to in the affidavit of Keith Hayley, Executive General Manager of Middlemount Coal
35 Mine Proprietary Limited, sworn and filed on the 7th of August 2023.

I need to consider the cooperation that Middlemount Coal Mine provided with the investigation. I accept the Defendant fully cooperated with the investigation once
40 departmental inspectors and investigators arrived on site. They were actively involved in assisting the inspectors. They assisted in coordinating interviews with witnesses, coordinating the mine's responses to requests for documentation, providing detailed responses to directives issues and providing updates to the inspectors in relation to directives interviews and the mine's investigation. Furthermore, the trial was originally, as I have already said, scheduled for three
45 weeks with 47 witnesses and that has been obviated by the plea of guilty.

I also take into account actions that were taken following the incident. Immediately after the incident, I accept that Middlemount Coal commenced its own detailed analysis and investigation, and conducted comprehensive interviews – sorry – reviews of key safety documentation. And developed and implemented a number of safety programs and initiatives. This is all sworn to in the affidavit of Keith Hayley, and that was filed on the 7th of August 2023. I have the power to impose a fine. I have regard to section 48 of the Penalties and Sentences Act in determining the amount of the fine. As far as reasonably practicable, I must take into account the financial circumstances of the offender and the nature of the burden. I note that the offender here is a corporation.

General deterrence looms large. Safety obligations imposed by law must be taken seriously and the Court has a duty to impose a penalty that will compel compliance. In this way, coal mine workers are kept safe. Personal deterrence must be considered, but in the absence of prior convictions, in my view it is not as relevant in this case as general deterrence, especially in view of the overall safety and health management system that was in place at the time including the Geotechnical Principal Hazard Management Plan and also the other safety documents that I have referred to. Personal deterrence does not loom large. I have taken into account the objects of the Coal Mining Health and Safety Act contained in section 6, namely:

To protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations, and to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level.

“Acceptable level” is defined in section 29:

For risk to a person from coal mining operations to be at an acceptable level, the operations must be carried out so that the level of risk from the operations is within acceptable limits and as low as reasonably achievable. To decide whether the risk is within acceptable limits and as low as reasonably achievable, regard must be had to the likelihood of injury or illness to a person arising out of the risk and the severity of the injury or illness.

Section 7 of the Act sets out how the objects are to be achieved and, relevantly:

Imposing safety and health obligations on persons who operate coal mines or who may affect the health or safety of others at coal mines, and providing for safety and health management systems at coal mines to manage risk effectively.

In deciding what a proportionate penalty is in this matter, Prosecution has referred me to a number of cases which Defence submits are distinguishable from the current case. I refer first of all to Clermont Quarries, a decision of the Emerald Industrial Magistrates Court, Magistrate Walker on the 25th of February 2021. A \$180,000 fine was imposed, which was less than 10 per cent of the maximum penalty. No conviction was recorded. That case is exhibit 2. The maximum penalty in that case

was 15,000 penalty units, or just less than \$2 million as a maximum. Death was caused because a worker was not properly trained. That was the basis of the charge. There were no systems in place to ensure supervisors were effectively performing their responsibilities towards training and ensuring compliance. At page 3, line 41, it was said:

None of those obligations were met by any of the Defendants. At best, lip service was paid to those fundamentally important obligations. There was a culture of paying little and inadequate attention to safety, creeping to complacency, and overall the failure was referred to as an abject failure of a safety system.

There are a number of matters that immediately are apparent that are different to the current case: (1) being the higher maximum penalty; (2) being the basis of the charge, death caused by the failure – there were no systems in place to ensure supervisors were effectively performing their responsibilities, and there was also a reference to abject failure of a safety system. As I have already noted in this particular case, there was a robust system of safety, but there was a gap in that system. That was not the case in Clermont Quarries. The criminality in that case, in my view, was much higher than the criminality in this case.

The next case was MCG Quarries, 24 May 2019. It was a trial in the Brisbane Industrial Magistrates Court, a decision of Magistrate Hay. This is exhibit 5. In this particular case, a \$400,000 fine – I should just go back. I do not know if I said it before, but in Clermont Quarries, \$180,000 fine was also accompanied with no conviction recorded. In MCG Quarries Proprietary Limited, exhibit 5, a \$400,000 fine was imposed and a conviction was recorded. There were three charges and the \$400,000 fine was to reflect the overall criminality of all three charges. The maximum penalty was 5000 penalty units. There was a conveyor that had not been commissioned.

It was used against expert advice, and there was a commercial focus which overrode safety. It was the basis of the charge that death was caused as a result of no guard covering the neck point of a conveyor. The seriousness of the matter was reflected in one of the individual Defendants being sentenced to an actual jail term, namely, six months of actual imprisonment with a head sentence of 18 months. It was taken into account that the company was insolvent and that is what led to an order as to costs being ordered, but the fine was still significant and it is certainly understandable why such a fine would be imposed. As I said at the beginning, there is a plea of guilty here, and pursuant to section 13 of the Penalties and Sentences Act, it must be reflected in the penalty that is imposed one would expect a reduction in penalty if one pleads guilty and cooperates with the administration of justice. And that did not occur in that particular case, and it is always to be considered more serious when a commercial focus overrides safety. There was a complete lack of safety systems in that particular case, and as a result, the failing was directly related to the death. That is a far more serious case, in my view, than this particular case where there were

otherwise robust systems with respect to safety in place, but there was a gap, and that has been acknowledged. A plea of guilty has been entered on that basis.

5 With respect to Thiess, it was a decision of 4 August 2017 in the Brisbane Industrial Court, Magistrate Bentley. This is exhibit 1. The reason I am jumping around with the exhibits is I have actually put it in most recent to oldest. In that particular case, a \$95,000 fine was imposed. That was less than 20 per cent of the maximum. No conviction was recorded. I did consider that case to be the most comparable with this case. I have listened to submissions made by Defence as to why that may not be
10 so. In this particular case, there was grievous bodily harm and the basis of the plea was that the failing was the direct cause of that grievous bodily harm. That is not the case here.

15 And it was failure to implement the safety and health management system by failing to ensure relevant training was conducted – relevant training of a young person – and that of course is a very serious failing. It is very easy to see how that would lead to catastrophic consequences, and the fine imposed in that case, in my view, does reflect the direct cause of the failing, causing the grievous bodily harm of the person in that case. I consider that case to be a more serious case than the present case.
20 Again relying on my previous findings that there was a robust safety system in place, albeit, a gap in that system upon which a plea of guilty has been entered, acknowledging that failing.

25 The next matter is Anglo Coal. It is a Brisbane Industrial Magistrates Court matter of Magistrate Wilson, exhibit 4. What has to be borne in mind about this case is that it follows on from a case of the Mackay Industrial Magistrates Court on the 23rd of November 2016. This represented a second conviction for Anglo Coal, and that needed to be taken into account – the prior conviction – which involved a death. And it was only seven months earlier that that incident occurred. The maximum
30 penalty was 5000 penalty units and a fine of \$284,625 was imposed and a conviction recorded. That is roughly half of the maximum penalty.

35 That case involved niche prep and the failing was that it should have been ensured that the niche was not opened until the property was inspected and made safe for work. It had not been opened for some time. There was a statement of principle in that case that the conduct of the Defendant and not the outcome was to be sanctioned. There was a joint – I will not say “joint” – there was no divergence in the submission with respect to penalty. Both Prosecution and Defence submitted that
40 a penalty in the range of \$200,000 was appropriate.

In my view, that case is much more serious than this case when Anglo Coal had already been dealt with on the 23rd of November 2016 and had been fined a much lesser amount, \$137,500, which was said to be 25 per cent of the maximum penalty, and no conviction was recorded. Again it was a death and failure in systems of the
45 mine. The deceased person was directed to go into an area that was unsafe, which was an area that was filled with gas.

And it was said in that earlier case at page 6, line 11:

Systems of the mine were in such a shoddy state, the executives of the mine say they were not even aware of the deficiencies in their own system. Attention was drawn to the deficiencies leading up to the death.

5 What needs to be immediately acknowledged is that the failure was said to have caused the death of the person in that case, which is not the situation here. They were given the benefit of no conviction recorded, but of course personal deterrence and general deterrence looms large in the second case in 2017 because of the 2016 case. Here, the safety health management system did not meet the standard expected
10 of the safety health management system in that the components were not contained in a single document, which guided the risk management process for ground control. The intention at Middlemount Coal was to have a Ground Control Management Plan as a guiding document separate to the Principal Hazard Management Plan.

15 The safety health management system would have met the expected standards if the Ground Control Management Plan was not in draft form and it was implemented, and it is accepted by Defence and it is common ground that the failure in this case was not having a single document which guided the risk management processes for ground control and effectively incorporated all the safety processes into one
20 document. As I have already said, I do accept, by reference to the documents that I have referred to already that a sophisticated and robust safety and health management system including a Geotechnical Principal Hazard Management Plan, a series of Trigger Action Response Plans and the Standard Operating Procedures designed to analyse and manage geotechnical hazards and reduce the risk associated
25 with that to as low as reasonably achievable existed.

It was formally audited every two years. As recently before the incident was May 2019 by an independent expert, Mr Cross, and the Mine Safety Institute of Australia, which is exhibit 8 to the affidavit of Keith Hayley. A draft control – sorry – a draft
30 Ground Control Management Plan was prepared by Middlemount Coal in response to the inspector of Mines Directives, but it was unable to be finalised as at the date of the offence without further data prepared by Cartledge Mining and Geotech. Following the incident, the Ground Control Management Plan was finalised and implemented at the mine. That was 1 April 2020, and is exhibit D to the affidavit of
35 Keith Hayley. This information has been sworn to in the affidavit of Keith Hayley, Executive General Manager of Middlemount Coal.

Defence says these matters go to the heart of Middlemount Coal's attitude to safety, and they have taken robust steps towards the most effective safety system there can
40 be. They point also to the plea of guilty, cooperation, no prior convictions that the corporate offender is an upstanding corporate citizen and has made significant contributions to the community. Prosecution contends for a fine of between \$200,000 and \$400,000 with a conviction recorded. Defence contends for a fine of \$70,000 with no conviction recorded.

45 I agree with the Defence submission that the Prosecution's submissions in the circumstances of this case, which are very different from the other cases I have been

referred to, would be disproportionate to the criminality of the offence, noting that the circumstance of aggravation has been removed and the failure is a narrow point. I consider in all of the circumstances that it is appropriate, whilst not a mathematical exercise that 10 per cent of the maximum penalty is proportionate to the criminality of what the corporate offender has done, namely, \$70,000, and that will be the fine. Costs are agreed at \$100,000. With respect to whether or not to record a conviction, I take into account the lack of previous convictions for an offence of this kind, despite operating the mine for over 10 years; its commitment to safety; the other matters that I have pointed to with respect to being an upstanding corporate citizen and the significant contributions made to the community, and I do not record a conviction. I note that the other cases I have been referred to, which I consider more serious, is also in line with no conviction being recorded. So to my mind, when one looks at a narrow point here, it is appropriate no conviction is recorded and to record one would be disproportionate to the criminality of the corporate offender's actions.

15

MS FARNDEN: Your Honour, just one matter. The costs were agreed to be 110.

HER HONOUR: What did I say?

20 MS FARNDEN: One hundred thousand dollars.

HER HONOUR: Sorry, 110.

MS FARNDEN: Thank you, your Honour.

25

HER HONOUR: Thank you.

MS FARNDEN: The only other matter, your Honour, in relation to Darren Cuthbertson's complaint, I understand there were two charges attached to the complaint. I intended to - - -

30

HER HONOUR: Could only be that one. Thank you. Yes. Okay. I see why. I have only got one on the front of our file, I think is the issue, but I think charge 2 comes in under the particulars. Yes. Okay. I apologise about that. All right. Well, Prosecutions having indicated intends to offer no evidence against Darren Lee Cuthbertson for charge 2, 26 June 2019 at Middlemount Coal Mine in the Magistrates Court, District of Mackay in the State of Queensland, upon whom the safety and health obligation was imposed by section 42, subsection (c) of the Coal Mining Safety and Health Act 1999, did fail to discharge the obligation in contravention of section 34 of the Act and the failure to discharge that obligation caused the death of a coal mine worker. That charge is dismissed and the Defendant is discharged. And I should just say for the record, I do acknowledge the presence of Mr Routledge's wife and his son, and I pass on my condolences to them. But of course this matter turns on a different point. Okay. Thank you. We will adjourn.

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