

Work Health and Safety Act 2012 (SA)

Part 11 Enforceable Undertakings

REASONS FOR DECISION

File number: 2016-5392

Entity 1: Jarred MacGillivray Pty Ltd

ACN: 160357317

Entity 2: Callan MacGillivray Pty Ltd

ACN: 160359615

Location of Incident: 74 Fisher Street, Fullarton, South Australia

Date of Incident: 9 August 2016

Background to application

1. On 9 August 2016, at 74 Fisher Street, Fullarton SA, two partners of the business known as Textbook Carpentry, namely Jarred MacGillivray Pty Ltd, and Callan MacGillivray Pty Ltd, were providing first-fix carpentry services when a timber frame fell on a worker (Clyde Norris) who suffered fatal head and brain injuries. Mr Norris died as a result of those injuries.
2. The Regulator commenced a prosecution against Jarred MacGillivray Pty Ltd and Callan MacGillivray Pty Ltd (“the two companies”), on 2 November 2017 on the basis that both companies had a workplace health and safety duty under section 19(1) of the *Work Health and Safety Act 2012 (SA)* (“the Act”) and they failed to comply with their duty contrary to section 32 of the Act. The Regulator alleged two contraventions against both companies.
3. On 18 January 2018, the companies notified the Regulator, through legal counsel, of their intention to give a WHS undertaking (“undertaking”) for the contravention of the Act alleged under paragraph 1.5.1(a) of the *Information and Summons* dated 2 November 2017, namely the alleged contravention that:

(The two companies) failed to ensure, so far as reasonably practicable, that their workers used a system of work which minimised the risk of a 28m timber framework falling by requiring a construction sequence designed to minimise the amount of unsupported framework, such that whenever an eastern wall

frame could be supported by an adjacent perpendicular internal wall frame, the supporting frame should be immediately erected, braced, fixed to the slab and used as a temporary support for the eastern wall frame.

4. The two companies also notified the Regulator of their intention to plead guilty to the remaining contravention charged in count 1 of the Information, namely the breach of sections 19(1) and 32 of the Act, in that the companies failed to ensure that their workers used a system of work which minimised the risk of a 28m timber framework falling by requiring that all props used as temporary bracing not only be secured to a stud or top plate of the wall frame, but also at the base of the prop to the slab, the ground, or some other immovable object.

Factors taken into consideration

5. The two companies each undertook to plead guilty to a contravention of sections 19(1) and 32 of the Act in that they each failed to ensure that their workers used a system of work which minimised the risk of a 28m timber framework falling by requiring that all props used as temporary bracing not only be secured to a stud or top plate of the wall frame, but also at the base of the prop to the slab, the ground, or some other immovable object.

6. The undertakings relate to the alleged contravention by the two companies of sections 19(1) and 32 of the Act, in that they each failed to ensure, so far as reasonably practicable, use of a safe system of work, in that they failed to require a construction sequence designed to minimise the amount of unsupported framework, such that whenever an eastern wall frame could be supported by an adjacent perpendicular internal wall frame, the supporting frame should be immediately erected, braced, fixed to the slab and used as a temporary support for the eastern wall frame.

7. The current Australian Standards do not provide specific guidance on the *methods* in which temporary bracing should be utilised in residential construction.

8. The undertakings were proposed to set out the manner in which the two companies would implement into their policies and procedures how safety would be taken into account when determining:

1. The sequence in which wall frames are erected;
2. Where internal walls can be used for bracing; and
3. Where temporary bracing will be used,

in order to ensure that adequate bracing is provided at all times that first fix carpentry is being performed.

9. The two undertakings' merits and benefits- including the quality of the strategies proposed and extent to which they are likely to achieve measurable improvements in work health and safety.

10. The undertakings outlined strategies that will deliver benefits to:

- o the workplace- through improved safety measures as set out;
- o the industry- through training and awareness sessions targeting the future generation of apprentice carpenters; and through the commitment to drafting and sending a letter to industry bodies seeking support for the development of a new relevant Australian standard; and,
- o community benefits- through:
 - sponsoring an award in the name of the deceased victim, Clyde Norris, in order to recognise achievements by outstanding apprentices in the area of health and safety; and
 - donations to charities for the purpose of using the funds to support initiatives targeted towards the health, safety and well-being of apprentices in the building/construction industry.

11. Jarred MacGillivray Pty Ltd and Callan MacGillivray Pty Ltd have declared that they have the ability to comply with the financial and other terms of the undertaking.

12. I have been advised that the companies employ a total of four (4) employees. I have considered the significance of the commitments by the companies, both personal time and financial commitments, compared to the capability of the companies entering into the WHS undertaking.

13. Neither of the companies have a history of non-compliance with the Act.

14. I have considered the views of the parents of the deceased victim in relation to the terms of the WHS undertaking.

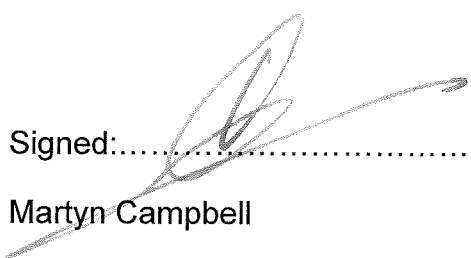
15. I have considered the likely outcome should the relevant contravention be dealt with through legal proceedings, and the outcomes proposed in the WHS undertaking. In particular, I have considered the tangible benefits to the industry, community and workers that would arise out of the undertakings.

Reasons for Decision

16. Having considered all of the above factors, and in all the circumstances of this matter, I am of the opinion that the undertakings given by Jarred MacGillivray Pty Ltd and Callan MacGillivray Pty Ltd as partners in Textbook Carpentry, are an appropriate enforcement option in regard to the relevant contravention.

17. I have concluded that the undertakings are a preferred enforcement option to continuing the prosecution against the relevant contravention due to the opportunity to provide lasting organisational change within the companies and Textbook Carpentry's business; the opportunity for the companies to provide lessons learnt and to generate awareness in regards to their own experiences as a result of the incident to a new generation of apprentice carpenters in the industry; to provide increased motivation to new apprentices in excelling in matters of health and safety; and to provide a significant donation to charities targeting health and wellbeing of apprentices in the industry. These initiatives would not have been achieved in the present matter by prosecution alone.

18. Pursuant to section 216 of the Act, it is my decision to accept the undertakings by Jarred MacGillivray Pty Ltd and Callan MacGillivray Pty Ltd offered on 15 March 2018 and the effect of this decision is that the particular contravention that it relates to will be withdrawn from the prosecution proceedings.

Signed:  Date: 22/3/18

Martyn Campbell

Executive Director, SafeWork SA