QUEENSLAND COURTS AND TRIBUNALS

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

KUSKIE, Magistrate

MAG-00184696/24(0)

OFFICE OF THE WORK HEALTH AND SAFETY PROSECUTOR	**Complainant**
and	
CORONADO CURRAGH PTY LTD	**Defendant**

ROCKHAMPTON

11.06 AM, WEDNESDAY, 15 OCTOBER 2025

DAY 1

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: Yes. Good morning.

MR NICHOLSON: Good morning, your Honour.

HIS HONOUR: Yes.

MR NICHOLSON: Your Honour, my name is Nicholson, N-i-c-h-o-l-s-o-n, first initial S. I'm the work health safety prosecutor and I appear for the State in this matter.

HIS HONOUR: Thank you, Mr Nicholson.

MR HOLT: Yes. May it please, your Honour, my name is Holt, spelling H-o-l-t, initials S C, of King's Counsel. I appear with my learned friend Mr Dighton, D-i-g-h-t-o-n, initials B P, of counsel, and we're instructed by Ashurst for Coronado Curragh Proprietary Limited. May it please the court.

HIS HONOUR: Thank you very much, Mr Holt. Yes, Mr Nicholson.

MR NICHOLSON: Your Honour, this matter is for sentence this morning. I am unsure – I think the plea needs to be taken from the defendant.

HIS HONOUR: Yes. Okay.

MR HOLT: If your Honour pleases, I hold a written authority to enter a plea on behalf of the corporation under the Criminal Code. If your Honour pleased, I would be in a position to enter that plea on behalf of the company.

HIS HONOUR: Okay. Thank you very much, Mr Holt. Yes. It's a charge under the complaint of Simon Nicholson, Work, Health and Safety Prosecutor, made on the 11th of November 2024, who says that between the 16th day of November 2021 and the 21st day of November 2021 near Blackwater in the Magistrates Court district of Emerald in the State of Queensland, Coronado Curragh Proprietary Limited was an operator of a coal mine, namely, the Curragh Coal Mine, and pursuant to section 41(1) of the Coal Mining Safety and Health Act 1999 (Queensland), had an obligation to ensure that the risk to coal mine workers while at its mine was at an acceptable level and failed to discharge that obligation in contravention of section 34 of the Act. Yes, Mr - - -

MR HOLT: May it please the court, Coronado Curragh Proprietary Limited pleads guilty to the charge which has just been put to the court.

HIS HONOUR: Thank you very much, Mr Holt. Yes. Yes, Mr Nicholson.

MR NICHOLSON: Please, your Honour. Your Honour, in anticipation of this morning's proceedings, an amount of material was filed by both myself and my learned friends for the defendant. Does your Honour have that to hand?

HIS HONOUR: I have that and I have read that. Thank you - - -

MR NICHOLSON: Thank you, your Honour.

HIS HONOUR: - - - Mr Nicholson.

MR NICHOLSON: I do have a hardcopy of the material if that would be of assistance to the court.

HIS HONOUR: Yes, please.

MR NICHOLSON: So contained in the bundle I will tender, your Honour, are an outline of our submissions, the agreed statement of facts, a comparable sentence referred to in our submissions of Office of the Work, Health and Safety Prosecutor and Middlemount Coal and Darren Lee Cuthbertson, Harrison v Teese Proprietary Limited and an affidavit of Andrew Broadfoot. I've also provided in this bundle, your Honour, an outline of the defendant's submissions, together with the submissions and – sorry, the decision of the Magistrates Court in Office of the Work, Health, Safety Prosecutor v BM Alliance Coal Operations, together with a copy of the affidavit filed by Ms Hennig. My learned friend will address you in relation to the affidavit in due course.

HIS HONOUR: Thank you.

MR HOLT: Thank you, your Honour. If - - -

HIS HONOUR: Yes.

MR HOLT: If it's convenient, we'd be perfectly content for that folder to be marked simply as exhibit in accordance with its - - -

HIS HONOUR: Okay.

MR HOLT: With its index so that your Honour's not marking multiple documents.

HIS HONOUR: Yes. Thank you. I'll mark that exhibit 1.

EXHIBIT #1 ADMITTED AND MARKED

HIS HONOUR: Thank you.

MR NICHOLSON: Your Honour, it's my intention this morning, in addressing you, for the State to take you through the facts and the outline of submissions.

HIS HONOUR: Yes.

MR NICHOLSON: I intend to address you in relation to the comparative material provided and I also intend to address you as to penalty. In relation to the statement of facts, your Honour, those are contained in the bundle tendered up. I understand your Honour has had an opportunity to read those facts.

HIS HONOUR: I have, thank you.

MR NICHOLSON: May it please. Your Honour, the defendant is the owner of the Curragh open cut mine in northwest Blackwater, the subject of 13 mining leases and there are two open cut mines: Curragh South and Curragh North. As the facts state, there are draglines present at those coal mines, and these are huge pieces of machinery. Your Honour may have appreciated the size of these pieces of plant through the photograph provided in the statement of facts.

HIS HONOUR: Yes, I have, thank you.

MR NICHOLSON: And indeed, there is a number of photographs in the defendant's material which gives your Honour an opportunity to consider the scale and size of these pieces of plant.

So at paragraph 7 of the statement of facts, there is, as I say, a photo of the dragline. You can see the features that are pointed out, some of which I will refer you to in my address, and as I submitted earlier, you may gain an appreciation of the size of this piece of plant. Of relevance to the facts in this case are the tub and the shoe, which are pointed out.

On the 21st of November 2021, tragically, a coal mine worker, Mr Clark Peardon, died as a result of injury sustained whilst working underneath the house of the dragline. Your Honour can see the reference to the house in photograph – at the extraction at paragraph 7. I'd like to mention, your Honour, that members of Mr Peardon's family are seated behind me today in court.

Mr Peardon was performing tasks underneath the house and a camera struck his head and he fell to the ground. He tried to move out of the way of the dragline shoe, which then passed over him, causing fatal injuries. Your Honour will note, at 10, that the – Mr Peardon was trying to replace the sling holding the cable on the dragline before he died.

Now, as I mentioned, the death of Mr Peardon was an undeniable tragedy, acknowledged by the defendant in its submissions, but of course, the case before your Honour this morning does not alleged that the failures acknowledged by the defendant caused his death; however, as appears in the facts, the subsequent investigation identified that the defendant failed to fulfil several safety obligations under the Coal Mining Safety and Healthy Act, which I'll take you through in a moment. These are listed at paragraphs 14 through 15 and addressed also at paragraphs 8 through 10 of the submissions.

In summary, the defendant had in place a safety health management system as required by law, the Coal Mining Safety and Health Act. The safety health management system contained management and operating procedures for risk management at the coal mine. There was a procedure for machinery and other plant around draglines, referred to as CSP025. The investigation identified that that only dealt with requirements and risk relating to workers operating mobile plant near a dragline. There were a number of things in the trainee manual, as referred to at paragraph 19 of the facts and 9 of the submissions, that dealt with behaviour expected of workers around draglines. I'll clarify that by saying they were trained in these things to identify, and they're listed at paragraph 19. This was in the training manual rather than in the SHMS.

They were – there was training to not walk close to shoes or tracks when the machine in propel; keep well clear of the tub when in propel; be aware of confined areas between the shoe, house and tub when in propel; allow for a fall or stumble in order to get clear of the machine as it is operating and obvious danger areas must be kept clear of, and they are listed there at paragraph 19. Workers were trained to beware of the swing arc of the shoes in the back of the house.

There were also signs, your Honour, affixed to the underside of the dragline houses at various locations, including where Mr Peardon and other workers had entered, and those signs stated, "Restricted area when machine is walking or swinging." There was no reference to or explanation of these signs in the safety health management system.

During the investigation, other dragline operators were interviewed and asked to comment on no go zones and restricted areas, and your Honour can see some of the reference to that in the facts. Workers were clear on the swing or boom area being a no go, less so on whether the area underneath the house was a restricted zone or no go zone or neither, and that extended to the area between the tub and walking shoes. Some operators had seen other coal mine workers near the underside of the dragline whilst it was walking. They all said that they wouldn't enter or remain underneath, and as I addressed your Honour on earlier, there was no specific written procedure.

Mr Peardon was assessed and completed a risk assessment about dragline ground support in March 2021 and he was certified as satisfactory, but he ticked no to assessments regarding whether he needed to isolate all sources of energy before starting work, whether he could be caught in or between anything, whether he could come out – where he could come into contact with anything, whether he could slip or trip or something, and at 35 of the facts, your Honour, you also see that another coal mine worker gave some similar answers, and neither identified the hazard of the camera striking whilst a no go zone.

Your Honour will see at paragraphs 41 through 47 of the facts and 12 of the submissions the reference to the STAR procedure, which is stop, think, act and review. This was being undertaken – this was not being undertaken, I should say, by workers as required by the risk management procedure referred to.

So from the facts that your Honour has read and from these matters I've highlighted, you will see that the investigation identified a number of failures which form the basis of the proceedings this morning. A risk to coal mine workers of injury or death from being struck by part of an operating dragline, including whilst performing work in the footprint of the dragline house and whilst it was on foot. A high likelihood of injury and the risk was not at an acceptable level because it was not as low as reasonably achievable in that coal mine workers were performing work in the footprint of the operating draglines, including underneath the house whilst it was on foot and not conducting those STAR processes.

As set out underneath the heading failures in paragraphs 48 through 51, there should have been, at the time this incident occurred, a clear prescription in the SHMS that coal mine workers were not to perform work on foot in the footprint of the dragline house and operating – of an operating dragline, clear and specific procedure or work method for said work whilst not in mobile plant, to do a STAR or job safety analysis and to ensure that they – that was complied with and to ensure the coal mine workers were supervised by onsite personnel through CCTV footage or otherwise so that the practice of performing work on foot in the footprint was identified and addressed.

Those are the matters that I've extracted from the facts that I wanted to address you – your Honour specifically on this morning. Do you have any questions about the facts, your Honour?

HIS HONOUR: No, thank you. I understand - - -

MR NICHOLSON: Please.

HIS HONOUR: - - - those.

MR NICHOLSON: I'd like to turn now, then, your Honour, to address you in relation to our outline of submissions. Your Honour, this case was started by complaint on the 11th of November 2024 and a first return was scheduled for the 25th of January 2025. On the 26th of June 2025, it was listed for sentence today.

In our outline, your Honour will see, in the overview, the offence provision relied on and the maximum penalty referred to. I will address your Honour in a moment on the fine we say is appropriate, which is $100,000. I've set out for your Honour, in the outline, the legislative framework, and I don't seek to take your Honour to that at this stage.

It's clear, your Honour, that the purpose of Acts and legislation like the Coal Mining Safety and Health Act is to keep workers safe at work. Workers and their friends, family and loved ones should expect to be safe at work and to go home safe, and that is why there is such comprehensive legislation in place to deal with risks, particularly at workplaces like this at Coronado Curragh.

In my submission, and it is clear from the authorities and comparables in the material provided to your Honour, general deterrence looms large in the sentencing exercise. The comments of her Honour Judge Fantin in the oft-cited passage from Mac Plant which is extracted in the materials are relevant in that regard, and Justice – his Honour Judge Rafter [indistinct] in Brisbane Auto Recycling, which is extracted at 29. Now, I appreciate that those cases were decided under a different legislative regime, under the Work Health Safety Act, and were in relation to – the Brisbane Auto Recycling case was in relation to an industrial manslaughter conviction, but their Honours' pronouncements and comments do have relevance to your Honour's sentencing task in the case at hand.

We know that coal mining is a huge industry in this state. The work is very dangerous, often involving large pieces of plant, and as her Honour Magistrate Bentley said in the extracted case of Teese, the duty of care expected is very high that those engaged in business in the resources sector.

More recently, in 2023, in the Middlemount case, her Honour Magistrate Hartigan noted that the court has a duty to impose a penalty that compels compliance, and in that way, coal mine workers are kept safe.

As set out in our outline, it is our submission that this is a serious example of the offence. The size of draglines and their complexity meant the possibility of injury being – of being struck by objects associated with the plant was foreseeable and it was well known in industry. Your Honour would see in the reference in our submissions to the 1999 bulletin sent out by the Coal Mine Inspectorate that issued a report of a coal mine worker being seriously injured when they fell into part of the operations of a dragline and suffered injury, and in 2021, there was a report of a coal mine worker hitting his head on a light attached to a dragline and sustaining injury.

So in my submission, the risk was palpable and apparent at the mine, and as your Honour will note from our submissions and our facts, there were five incidents in a short period of time before the tragedy involving Mr Peardon.

The control measures in the complaint, in my submission, were not burdensome. They made it clear – they were – to make it clear that workers should not perform work in the footprint and needed to undertake the STAR process and to be monitored in doing so. That compliance aspect was critical. So those are the matters I'd seek to raise in relation to the objective seriousness of the offence and matters that I fleshed out more fulsomely in my submissions.

In relation to comparable sentences, your Honour, there's been two that have been put before your Honour to assist the court in arriving at a penalty, which we say should be $100,000. I've addressed the question of conviction in my submissions.

In relation to Middlemount, that was also a case under the Coal Mining Safety and Health Act and a decision delivered by her Honour Magistrate Hartigan. It dealt with a simpliciter case and the failure to implement a ground control management plan in

an open cut mine. In that case, there was interaction between the regulator and the defendant to address that issue. The plan never made it past the draft stage and then an incident occurred. In that case, the defendant was fined $70,000 and no conviction was recorded.

So in that case, there was interaction between the regulator and the defendant in order to fix a gap in the safety health management system, there was a draft plan that was not implemented and then a failure identified following an incident.

Here, your Honour, in my submission, there is a distinction in that there is a entire missing piece. There was no – there was a failure to ensure, beyond working on mobile plant, that coal mine workers were not working inconsistently with these very dangerous pieces of plant, the dragline, so a much bigger gap – much big failure than in Middlemount. That missing piece was critical to keep coal mine workers safe.

Your Honour has also received submissions about Harrison v Teese, which is a case involving a failure in training. In that case, there were some distinguishing features in that grievous bodily harm was alleged to have been caused to one worker, there was no injury alleged to another, and some distinguishing features in terms of mitigation to do with the interaction between the defendant and the family and other things which led to the court imposing a fine of $95,000. The observations of the court in that case regarding deterrence are apposite to here, and so I draw your Honour's attention to that case.

My learned friends have also referred to the case of BM Alliance, which was a decision of Magistrate Noud from August last year, and again, in that case, the court was dealing with a simpliciter offence under the Coal Mining Safety and Health Act, whereby there was a failure at a workplace, and I'll just bring my notes up as to that. May I have a moment?

It related to – your Honour, I neglected to tender, as part of my bundle, and I've made my learned friends aware of this, the submissions made before Magistrate Noud in the BM Alliance prosecution, which may be of use to your Honour - - -

HIS HONOUR: Okay.

MR NICHOLSON: - - - in addition to the transcript. So if that could also form part of the exhibit. Thank you.

HIS HONOUR: Thank you. We'll add that to exhibit 1.

MR NICHOLSON: Thank you, your Honour. So in that case, your Honour, and you may care to make a note that the essential facts of the case appear at page 3 of his Honour's decision, the defendant was an operator of a coal mine. The incident in that case related to the preparation of a dragline bench that involved dozer operators pushing slots or blades of dirt and rock around the bench area and once the dragline bench was prepared, the dragline could be brought in to remove the material to

uncover the coal like you see in that photo, the photos in my learned friends' material before you today. The dragline dozer preparation was being undertaken in December 2018. There was a failure whereby the dozer operator, his dozer went over the side of the area and he died.

The failure in that case did not allege that the defendant's conduct caused the operator's death but a number of issues were identified, and it was suggested, as your Honour will appreciate in submissions that you have before you, that it was a gap in the system – a narrow gap, and otherwise, dozer operators were well trained and there was otherwise a comprehensive safety health management system, and I seek your Honour to draw that distinction with this case in that whilst some features are similar, again, in my submission, this was a very large piece of the procedures and the compliance that should have been in place that wasn't and was a much more serious example of this kind of offence than in BM Alliance and Middlemount.

So that is why it is our submission that the penalty suggested is appropriate. My instructor has just raised also, your Honour, that the maximum penalties have changed since those two offences were dealt with in BM Alliance and Middlemount by reason of an increase in the penalty unit.

So in all the circumstances, your Honour, those are the matters that I seek to raise. I've addressed you on the salient matters of fact that are before your Honour, I've addressed you in terms of how we say this is a serious example of the offence, it was a well-known risk, it was a simple offence but, in my submission, not a simple gap in procedure as there was no simple, clear prescription for keeping workers out and away from interacting with, again, a big piece of plant that presented a clearly identifiable and foreseeable range of risks and hazards.

Your Honours can – your Honour can see at paragraphs 16 through 21 – I beg your pardon. Your Honour can see that 16 through 21 November 2021, there are other workers working under, near, on or about the dragline, so the risk was repeatedly arising and captured on the mine's CCTV footage, and that clearly demonstrated the need for formal controls, and given what workers told investigators, as set out in the facts, there was a lack of clarity about no go or restricted areas. In my submission, these things are not submitted with the aid of hindsight. The control measures, as I said, are not burdensome or expensive and they should have been in place. Those are the matters I seek to rely on, your Honour, unless you wish to ask me any questions.

HIS HONOUR: No. Thank you, Mr Nicholson.

MR NICHOLSON: May it please, your Honour. I have a copy of an order, your Honour, that I'd seek to tender. It's a draft order. The only matter missing, of course, is the fine penalty that your Honour will impose. If it please the court.

HIS HONOUR: Yes. Thank you, Mr Nicholson. Yes, Mr Holt.

MR HOLT: Yes. May it please, your Honour. As will be obvious, in fact, from the form of the order that's been handed to your Honour, there's very little distance between the parties at the bar table, and that - - -

HIS HONOUR: There is, yes.

MR HOLT: - - - reflects, in many ways, the way in which this case has been conducted from the outset by Coronado, that is, there's an early plea of guilty to a charge which has always been a simpliciter charge. Unlike many of the cases which end up being resolved down to a simpliciter charge, this one has always been one, rightly so, with the greatest of respect to our learned friend who makes those prosecutorial decisions, and the plea has been an early one and there's no suggestion of anything other than complete cooperation by Coronado in the investigation and process of coming to this point in the court. There are, though, some things that it's important are said, both on behalf of Coronado and also in the presence of Mr Peardon's family, and so I will do so.

Firstly, can I simply notice at the outset for your Honour that present in court are, firstly, the chief executive officer of Coronado Curragh Proprietary Limited, Douglas Thompson; the general counsel, Susan Casey; and the director of safety and compliance for Queensland, Tracey Hennig, who's also the deponent of the affidavit which your Honour has seen. The presence of all of those people, and with no disrespect to the others, the chief executive officer reflects the seriousness with which Coronado has treated this matter from the outset.

The material that we rely upon has already been tendered so I don't need to say anything about that, save two things about the affidavit of Tracy Hennig. Could I hand, please, to your Honour, just for no purpose other than for ease of reference, a paginated version of her affidavit?

HIS HONOUR: Yes, please.

MR HOLT: Because there's just a couple of pages, and otherwise, it's going to be really awkward for me to - - -

HIS HONOUR: Okay.

MR HOLT: - - - take your Honour to those.

HIS HONOUR: Very much - - -

MR HOLT: Could I hand those - - -

HIS HONOUR: - - - appreciated. Thank you.

MR HOLT: Can I hand that to your Honour's clerk? And in doing so, could I ask your Honour, please, to go to paragraph 46 of the affidavit, which is found on page 10? The pagination is red now on the bottom of the whole document.

HIS HONOUR: Yes, I have that, Mr - - -

MR HOLT: Could I - - -

HIS HONOUR: - - - Holt.

MR HOLT: - - - just invite your Honour to draw a line through the words that appear in brackets, "such as?" There's no dispute between the parties as to the other matters in that paragraph but the – there are matters of detail which don't matter, and so I simply don't read that aspect of the affidavit.

HIS HONOUR: Okay.

MR HOLT: Thank you. Can I, perhaps unusually, just say this at the outset? Plainly enough, and our learned friend has been clear with your Honour, rightly so, and we have been in our submissions and it will not have escaped your Honour's notice, Coronado, of course, is not to be sentenced on the basis that the failures which it's pleaded to caused the death - - -

HIS HONOUR: Yes.

MR HOLT: - - - of Mr Peardon - - -

HIS HONOUR: I see that.

MR HOLT: - - - but it is, nonetheless, entirely appropriate to acknowledge that the investigation occurred as a result of a – the death of Mr Peardon, which is a tragedy, and we acknowledge the presence of Mr Peardon's family and we acknowledge the unqualified trauma that they will still be feeling by virtue of what occurred and the loss of Mr Peardon to their lives, and I do so personally and I do so on behalf of Coronado.

The facts of the matter and in terms of the issues that have been raised by our learned friend are summarised, as your Honour knows, in an agreed schedule of facts and are also, I hope, helpfully amplified a bit in the affidavit of Ms Hennig in terms of the safety, health and management system which exists, and so the only purpose of me making the submissions that I'll make for the next few minutes is just to deal with the submissions that have been made by our learned friend about the nature of the gap which existed here, because if I can put it in really simple terms, the risk here was of coal mine workers going effectively in the area underneath the dragline at a time that the dragline was operating - - -

HIS HONOUR: Yes.

MR HOLT: - - - either swinging or walking, as it's called when this enormous piece of machinery is moving. Now, is as set out and explained in Ms Hennig's affidavit, that risk is one that Coronado have well and truly recognised. There was no doubt it had recognised that, and so when one's assessing the gap, we would also invite your Honour, of course, to understand the things that are said by – explained by Ms Hennig from paragraph 15 but, in effect, from paragraph 21 of the affidavit on page paginated – red paginated page 4 about the system of work that was in place at the time of the contravention.

Now, none of this detracts from the acceptance by Coronado, of course, that it feel short of its obligation. That's just true. It is also true and appropriately true that the legislation which our learned friend is charged with the responsibility of administering places an exacting standard on coal mine operators, and it does so rightly. So we don't dispute that for a moment. Coronado does not step back from that proposition for a second, but when one's talking about gaps, it's very important to understand that any gap that occurs here occurs in the context what is otherwise a comprehensive and sophisticated safety, health and management system and training process and the like, and one can see that from the material which is set out in Ms Hennig's affidavit. In particular, while it was true and we have pleaded on the basis that there was no specific prescription in the safety, health and management system, workers were nonetheless trained on what are described, as your Honour will see, as no go zones, and those are set out, if it assists your Honour, at page 87 in terms of the red pagination, which is in TH3. There are, in the training manual, identified no go zones, and that training occurs. In addition, as your Honour has already been told, there are signs that make clear that the area is restricted when the dragline is operating, that is, either swinging or moving, which are literally in place where the coal mine workers would need to go.

So the risks had been identified and things had been done about them. There is no doubt that more could have been done and there's no doubt that, with the benefit of the investigation, should have been done, but in the context of the exacting standard of this legislation, it is sometimes hard to distinguish between that which is obvious with hindsight following an investigation of a matter like that – like this and that which might have assumed would be sufficient in the circumstances as they existed. What is unquestionably try is that the administrative controls, as they're described in this field of endeavour, were insufficient to ensure the coal mine workers did not do the thing which the sign said that they shouldn't do and which the training said that they shouldn't do, and that's on Coronado; it's not on the workers. That's what the legislation makes clear, and so those administrative controls were insufficient but they were not non-existent. There was training, there were signs. It just wasn't enough in those circumstances.

What we then see, and this, I suppose, is where one can see what it's said by the charge should have been done, from paragraph 10 of our submissions, are the changes that were made by Coronado immediately following this event, calling in a third-party subject matter expert to assess in light of the knowledge that had been acquired by virtue of the tragedy of Mr Peardon's death and the changes that were

then made, which are set out at (a), (b) and (c), which involved a new SOP, a new procedure added into the SHMS and onsite specific training in the wake of the tragedy of Mr Peardon's death. Now, the doing of all of those things would give the court some comfort in the sense that one would expect that a good corporate citizen and a good coal mine operator would do exactly that when that was identified.

As our learned friend properly identifies from the case of Steward, that's the Steward – the case of – that her Honour Judge Fantin delivered, you must be cautious about giving too much credit for doing the things that should have been done in the first place anyway. So I accept that without reservation, but it is also, nonetheless, true that it occurred and it occurred very quickly, comprehensively and in a way that we understand no criticism is made of.

The piece that I wish to focus on for these purposes, your Honour, is something which goes well being that admonition by Judge Fantin. That is what we've described at paragraph 11 of our submissions and what is explained in much more detail in Ms Hennig's affidavit, that is, what Coronado did following this incident is to develop what is called a proximity awareness system, the PAS, as I'm told it's shortened to, or P-A-S, and that is – and this really dovetails in with the submission I was making to your Honour before. It's increasingly true in this space, that is, in the space of risk management in high-risk industries, that administrative controls which we've always thought were likely to be sufficient, you know, just train people more, often aren't enough. What you need are what are called in the language of the space engineering controls, and so what Coronado has done is well beyond that which the prosecutor – workplace prosecutor quite properly alleges and it is accepted it should have done, but it has developed an engineering control to actually stop this from occurring.

Now, what's significant about that – this are a number of things. Firstly, it's industry leading. It's literally never been done, and Queensland, of course, and Australia are a major place where metallurgical coalmining in the world occurs. About 50 per cent of the seaborn metallurgical coal market comes from Australia and the vast majority of that, in fact, from this very area. So it's literally world-leading technology, and certainly Australian-leading technology. More than $5 million has been spent in the research and development phase of that technology, and I'll update your Honour on it. It's effectively still ongoing, but if your Honour takes up the affidavit, your Honour will see, right towards the end, it's in TH13, your Honour will see an article that's been written about the technology that's been deployed. So it's page 271 in terms of the red pagination at the bottom.

HIS HONOUR: Yes.

MR HOLT: And what it does is it incorporates three – in fact, four pieces of technology, but for these purposes, I'll refer to three, and your Honour can see it in the diagram. It refers to LiDAR, radar and optical, and so your Honour can see there are the different – effectively different areas outside of the danger area which are monitored by those different forms of technology, and as something comes, the

something being a person, comes closer, automated controls come into play, and ultimately, if the optical control comes into play, it stops. At an earlier stage, the machine itself has been taken control of for those purposes. The recognition of an object or a person is done through artificial intelligence technology. That's been a, as we say, a more than $5 million exercise which will necessarily dwarf any fine that the court imposes.

There are a couple of things that are really important about it. Firstly, I'm instructed that, and it makes sense just on the face of the material, that Coronado took this approach because a person died, and that's why they were willing to invest without, really, hesitation, money in this area of research and development, and so the other aspect of it is because it hadn't been done before, it wasn't a question of just buying it off the shelf. There's substantial commercial risk associated with it and significant expenditure without necessary reward, and much more importantly, it's shared the technology throughout the industry and it shared it even with the regulator, who's come to site to view it. It's been presented at 14 mining industry events and 21 people from different mining companies have come, eight representatives of the regulator have come to the site to see it operating. It's taken a long time to develop because new technology does. There are four draglines at Coronado still and there were at the time. The technology is absolutely fully implemented and working on one. On the next two of those, differences between those draglines are being ironed out, in effect, to make the technology function and then the last one will receive the technology at the time of its scheduled annual shutdown in 2026.

So that process is still committed to by Coronado for those purposes, and it is a very significant financial commitment. It is well beyond that which the prosecutor properly alleges Coronado should have done, so it's going above and beyond, and it's an engineering solution, which means that it's not relying on those softer administrative controls which, in our respectful submission, is really important, and so it's – you know, your Honour will have already observed it in this court, expressions of remorse abound but actions speak louder than words, and those are the actions.

Coronado has been operating this mine for seven years. Unsurprisingly, as our learned friend intimated, each one of these coal mines in these areas are big operations and very significant parts of these communities, particularly that community that surrounds Blackwater. We've set out, in the material, the work that Coronado does supporting the local community through charity and, particularly, opportunities for employment for women in mining and for the Indigenous community in relation to mining, and it has been committed to those processes, but it is also, of course, just a very significant part of the local economy in the way in which these wonderful parts of Queensland operate and are able to function, and Coronado takes the opportunity that comes from that very seriously and the obligations that come with it seriously, too. It's reflected in the fact that this is, of course, its first conviction.

Can I then deal, having said all of that, relatively briefly with the question of penalty? We've respectfully submitted that a fine more in the order of $65,000 would be appropriate rather than a fine at $100,000. Can I make some brief submissions as to why we respectfully submit that the authorities that our learned friend refers to really sit above the level of this one?

Firstly, and as will be obvious from the submissions that we've already made, this idea of a gap in Middlemount and a gap in BMA as being different from the case here, in our respectful submission, is not a submission that your Honour would accept. By way of example, in respect of BMA, where a penalty of $78,000 was imposed, as we can see from page 4 of his Honour Magistrate Noud's decision at line 25, what was clear was that the standard work instruction or the safe work instruction did not include instructions for bulk push dozer operations associated with dragline bench preparation, which was very much like the kind of gap that was being observed here, particularly given the other issues that I've taken the court to.

The other thing about BMA which is significant, of course, is that BMA had two prior convictions, which Magistrate Noud did not quantify in a mathematical sense in terms of an uplift because the High Court would have told him off for that, but nonetheless took into account, rightly, that that allowed for a, to use his Honour's words in his Honour's inimitable way, a permissible uplift in the sentence, but it does indicate that $78,000 is sitting high.

Teese, of course, was a $95,000 fine but there was a circumstance of aggravation in that case in that the conduct was said to have caused grievous bodily harm, so wholly distinguishable on the face of that, and in terms of Middlemount, which was a $70,000 case, our respectful submission is that the – every case is different, of course, but that the gap distinction that our learned friend identifies doesn't justify any difference in that sense. There's an agreed submission at the bar table that this is not the appropriate case for recording of a conviction, and so I won't address that unless your Honour needs me to.

HIS HONOUR: No, thank you.

MR HOLT: Unless I can assist your Honour further, those are our submissions.

HIS HONOUR: No. Thank you very much, Mr Holt.

MR HOLT: Thank you, your Honour.

HIS HONOUR: I want to return with my sentence as soon as possible for the convenience of the parties and, obviously, for the benefit of Mr Peardon's family as well. I might stand the matter down until 2 pm, return - - -

MR HOLT: As your Honour pleases.

HIS HONOUR: - - - with the sentence then.

MR NICHOLSON: If it please, your Honour.

MR HOLT: Thank you, your Honour.

HIS HONOUR: Yes. Thank you.

MR NICHOLSON: Thank you.

ADJOURNED **[11.51 am]**

RESUMED **[2.06 pm]**

TAKE IN DECISION