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TRANSCRIPT OF PROCEEDINGS

O/N H-78502

MAGISTRATES' COURT

OF VICTORIA

MS M.K. ROBERTSON, Magistrate

No. 2883

NOPSEMA

and

STENA DRILLING AUSTRALIA PTY LTD

MELBOURNE

THURSDAY, 3 SEPTEMBER 2015

**TRANSCRIBED BUT NOT RECORDED BY
AUSCRIPT AUSTRALASIA PTY LIMITED.**

MS: Matter of Stena Drilling Proprietary Limited.

MR: If your Honour pleases. I appear on behalf of Stena

5 MS THOMPSON: And I appear for the informant, your Honour.

HER HONOUR: And you are?

MS THOMPSON: Ms Thompson.

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HER HONOUR: Thank you, Ms Thompson. Now, is there anything either of you wish to raise?

MR: No, your Honour.

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HER HONOUR: Thank you. There was one question I had. With – am I required to declare the sentence I would have imposed but for the plea of guilty, being a Commonwealth matter? I went through the Act and - - -

20 MS THOMPSON: It's certainly been the case that it's commonly done that section 6AAA is applied in Commonwealth matters. It's not uniformly done. Judges of the Supreme Court have indicated that it is appropriate to be - - -

HER HONOUR: It's appropriate.

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MS THOMPSON: - - - picked up. Yes.

MR: And, your Honour, if I could assist on that also, I did refer to a matter in the Northern Territory Magistrates Court where there was a prosecution
30 approximately 12 months ago. And the learned magistrate in that case did say that the discount was 25 per cent and did declare a sentence that - - -

HER HONOUR: Yes.

35 MR: - - - would have been imposed but for - - -

HER HONOUR: Yes.

MR: - - - the plea of guilty.

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HER HONOUR: I saw that.

MR: Yes.

45 HER HONOUR: But I then, when looking at the legislation, couldn't see it. So that's clarified that. Thank you.

MR: Yes.

HER HONOUR: So this is – I’m not sure if anybody wasn’t here last time – the decision in the prosecution of Stena Drilling Australia Proprietary Limited by
5 NOPSEMA. Stena Drilling pleaded guilty to a charge of omitting to do an act it was required to do pursuant to clause 1 of schedule 3 of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 particularised in the charge. Essentially, it was omitting to carry out a risk assessment and omitting to undertake a toolbox talk with
10 all persons to be involved in or responsible for use of the equipment on the rig and omitting to use then a snatch block of sufficient capacity allowing – which would have allowed for an error rigging the operation not proceed as planned, and similarly with a snub line.

The company entered a plea of guilty. The facts establishing the elements of the
15 offence were not in contention and were tendered to the court as an agreed statement and will remain on the court file. The maximum penalty for the offence in this case is \$550,000, being the maximum penalty applicable at the time the offence was committed. In determining sentence, I must apply section 16A of the Crimes Act and bear in mind the directions from the courts or higher courts. On 27 August 2012,
20 Barry Denholm and Peter Meddens died as a result of injuries sustained from being struck by a associated rigging on the Stena Clyde. The Stena Clyde is a mobile offshore drilling unit operated by Stena Drilling Australia Proprietary Limited.

At the time, it was contracted by Origin Energy Resources Limited to perform
25 drilling operations in Commonwealth waters in Bass Strait, approximately 50 kilometres south-west of On Friday, the 24th of August, the Stena Clyde was drilling at a depth of approximately 1200 metres when deteriorating weather was forecast were commenced when the drill pipe became stuck. On that and the following three days, various methods were applied to rectify the situation. The
30 weather remained poor and the seas high. Safety concerns resulted in a number of attempts being aborted. On Monday, 27 August, Origin gave approval to sever the drill string using wireline technology. A Schlumberger wireline specialist crew were contracted and flown to the Stena Clyde.

35 The first phrase involved the Stena Clyde crew disconnecting the Derrick drilling machine from the drill string. At 8.30 am, a toolbox talk was held at which each member of the Stena crew who would be involved in the operation was in attendance. A risk assessment was discussed, as was what each crew member was required to do. The rig up of the Schlumberger wireline was completed and the crew
40 sent for a break. Prior to most of the crew returning and following conversations with Origin company representatives, the toolpusher and senior toolpusher commenced to off the Derrick drilling machine at the top using a torque wrench, as planned during the toolbox talk. This was unsuccessful.

45 The three men had a further discussion, and it was agreed to use a different method to break out the connection. This was to use a tong rig to grip the pipe and then operate the Derrick drilling machine. The change of plan was communicated to the

crew and individual directions given to each man individually by either the toolpusher or the senior toolpusher and a further toolbox talk was not held. The tragic sequence of events then commenced with a sudden increase in torque being applied. This is set out in detail in the statement of facts. When the torque was applied to the Derrick drilling machine, there was still men in the red zone, which is an exclusion zone around the equipment when in use. They had to be there by the nature of the operation. The forces generated resulted in the failure of the snatch block and the drill pipe when the attached tong spun out of control. Barry Denholm and Peter Meddens were struck and sustained fatal injuries.

The work environment in this industry is inherently dangerous. Work is carried out on platform, the equipment is powerful and the weather and ocean conditions unpredictable. Further, the potential consequences to the crew and the environment of any failure in equipment or safety proceedings are extremely grave. Here, for example, the stuck drill bit could not be ignored or left. Potential for a significant oil spill was there. The inherent dangerousness is reflected in the regime established by the Act, the Schedule and the Regulations and as enforced by the National Offshore Petroleum Safety and Environmental Management Authority.

The company has operated in Australia for a total of eight years. It had a safety case developed over time and had been subject to audits. It had a hazard identification process active on the rig and a reporting process was logged into a database. It was not disputed that this was proactive transparent and regularly reinforced with the workers. And this was on top of general health and safety procedures, which included elected health and safety representatives who received four to five days' training and refresher courses and also attendance at the Petroleum Industry Forum each year. There was a sophisticated training matrix in place, including initiatives such as new persons on the rig being inducted were required to wear a red hat for ready identification.

The company's safety records before 27 August 2012 was better than industry average. It had no prior convictions. There were two improvement notices, one in 2006/7 and one subsequent to 27 August 2015. Those were dealt with and resulted in no further action and, in my assessment, do not indicate any systemic failure in regard to the company. There is no evidence that the offence formed part of a course of conduct consistent with serious criminal acts. The victims of this offence were Barry Denholm and Peter Meddens. The profound, almost unspeakable impact on their families were in evidence through the statements of Sonia Denholm, Susan Guinness and Debbie Glen and Peters which were tendered in evidence by the prosecution.

I subsequently received by agreement the statement of Kylie Moss, the partner of Peter Meddens. Ms Moss' statement demonstrates the love Mr Meddens had for his partner, their daughter Millie, who was only nine months' old when her father died, and his stepdaughter, Charlie. It describes a loving family man who was engaged the home and future of his family. Ms Moss concludes:

I'm missing Pete more than words could ever say

5 a message that, I must say, comes through through all the statements from the men's families. The company, through Mr Ray, expressed its condolences and profound sympathy for the men's families. I was also told that the company had reached financial settlements.

10 I must also give weight to the company's plea of guilty and full cooperation with the Authority subsequent to the offence. I note that the company indicated its intention to plead guilty at the earliest opportunity. In doing so, it hastened the work of the prosecution, accepted responsibility for what happened by forgoing the right to advance the defence of due diligence arguably available to it safety system and has facilitated the course of justice in not requiring traumatised witnesses to the incident to give evidence.

15 I now move to more general factors, which include the deterrent effect of the sentence on the company, which is a highly relevant factor in matters of health and safety. Though, in this case, the only penalty I can impose is a fine, I accept that the company has taken such remedial steps as it can and, accordingly, specific deterrence has less weight than it would otherwise, although it is still a significant factor. I also feel that the size of the company financially diminishes the extent to which a financial penalty can, in fact, impose a significant specific deterrence. General deterrence is the sending of a message to others in this industry which will draw attention to them to ensure that workers' health and safety is not jeopardised; apart from through moral and other considerations, the financial cost of not giving the utmost consideration to health and safety will have a financial impact.

30 Having outlined the matters relevant, I return to my task, which is to impose a sentence of a severity appropriate in all the circumstances of the offence. The offence is one of omission, omitting to take all reasonable, practical steps to implement and maintain systems of work The offence is not one of causing the deaths of Mr Denholm and Mr Meddens, although that was the tragic consequence of it and is relevant in that regard. The offence would have been committed, indeed, if no one was even injured. I note that there were systems in place. It was the implementation on this particular day that resulted in conduct which gave rise to the charge being made and a plea of guilty being made. Scrupulous adherence to properly documented and maintained systems of work at all times is all essential in this industry. The potential consequence of any degree of negligence is profound, and the penalty must reflect this.

40 Weighing up all of these matters, Stena Drilling Australia Proprietary Limited is convicted and fined \$330,000 and ordered to pay \$113.90. I've had trouble and have considered carefully the issue of what the fine would have been but for the plea of guilty. The utility of a plea of guilty being savings to the State and the prosecution having to run a contested hearing is something that the High Court in Canberra would appear to have said is not relevant in cases such as this. However, the matters that I outlined, being the acceptance of responsibility and the savings on the

witnesses of not having to attend court must be relevant. In my view, it is around 25 per cent which would it would have been 25 per cent higher. 400,000 was the figure I was working – but I’m just not sure about the maths.

5 MS THOMPSON: 440, I calculate, your Honour - - -

HER HONOUR: Well, the fine would have been 400,000.

MS THOMPSON: - - - if it was exactly a 25 per cent discount.

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HER HONOUR: And that’s about the now, is there anything further?

MR: No, your Honour. We do seek a stay of 28 days.

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HER HONOUR: Yes.

MR: I understand that’s

HER HONOUR: That’s a standard - - -

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MR: But we do formally seek it.

HER HONOUR: - - - length of time.

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MR: Yes.

MS THOMPSON: No issue taken with that, your Honour.

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HER HONOUR: Thank you. And I grant a stay of 28 days. Thank you. Thank you Ms Thompson, for the helpful submissions and the way the case was run. Thank you.

MR: If your Honour pleases.

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MS THOMPSON: If your Honour pleases.

MATTER ADJOURNED INDEFINITELY