



GREENWAY CHAMBERS

Work Health and Safety – Recent decision

Ordinarily a District Court’s interlocutory decision on the adequacy of particulars would be about as noteworthy as a decision about costs. However a recent decision of Russell J is worth highlighting.

The proceedings concerned the prosecution of a kitchen bench installation company alleged to have exposed its installers to the risk of acquiring silicosis from cutting, grinding, drilling and polishing manufactured stone benches. Silicosis has been described as a preventable, but once acquired, fatal, disease. In *SafeWork NSW v Edstein Creative [2022] NSWDC 117*, Russell J ordered that the proceedings be stayed until the prosecutor particularised when and where the offence was committed. Given that the installation work was done at thousands of residential homes over a 6 year period, this was potentially an insurmountable barrier. Following that decision it became standard for defendants to insist on the production of ‘the Edstein particulars’. *Ingmar Taylor SC* and *Colin Magee* of Greenway Chambers, in *SafeWork NSW v Edstein Creative (No 2) [2023] NSWDC 180*, convinced Russell J to lift the stay despite the inability to identify each work location and date, on the basis that the prosecutor was pleading a continuing offence, namely the failure to take adequate measures to protect the workers, such as suitable breathing equipment, at any location throughout the period.

Ingmar Taylor SC
Greenway Chambers
June 2023

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