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| IN THE COUNTY COURT OF VICTORIA | ANONYMISED AND ADAPTED FOR EDUCATIONAL PURPOSES  |

AT MELBOURNE

CRIMINAL JURISDICTION

CR-ZZ-QWER

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| DIRECTOR OF PUBLIC PROSECUTIONS |  |
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| v |  |
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| ALL SEASONS ARBORY PTY LTD(A PSEUDONYM) |  |

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| JUDGE: | HIS HONOUR JUDGE CHETTLE |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: |  |
| DATE OF SENTENCE: | 28 September 2017 |
| CASE MAY BE CITED AS: | DPP v All Seasons Arbory Pty Ltd (a pseudonym) |
| MEDIUM NEUTRAL CITATION: | [2017] VCC EWQ |

REASONS FOR SENTENCE

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Subject:

Catchwords:

Legislation Cited:

Cases Cited:

Sentence:

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| APPEARANCES: | Counsel | Solicitors |
| For the Director of Public Prosecutions | Ms O. Wakely  |  |
|  |  |  |
| For the Accused | Mr E. Pulitz |  |

HIS HONOUR:

1. Through its sole director, Owen James[[1]](#footnote-1), All Seasons Arbory Pty Ltd[[2]](#footnote-2) (‘All Seasons’) has pleaded guilty to one charge of failing to maintain a safe system of work.
2. The particulars of the charge on the indictment and the details set out in the prosecution opening, Exhibit A, outline the agreed statement of fact in this case. I incorporate Exhibit A into these reasons for sentence.
3. Very briefly stated, All Seasons operated a tree maintenance and removal business. In April and May of 2014, All Seasons employed Thomas Eckhart,[[3]](#footnote-3) then 22 years of age. Mr Eckhart had worked for All Seasons for some four years.
4. On 2 April 2014, another company employee attended at Ferrars Street in Port Melbourne[[4]](#footnote-4) to quote on the removal of two trees from the front of those premises. Power lines were observed to be within 2 to 3 metres of the trees in question.
5. On 12 May of 2014, four employees including Mr Eckhart attended to remove the trees. Mr Eckhart was cutting branches from the trees and climbed the tree in order to carry out that task. One branch hit the nearby power lines and Mr Eckhart was tragically electrocuted and killed.
6. Although the risk the existence of live power lines had been identified by All Seasons, no real steps were taken to deal with that risk. The power was not shut down or suppressed. No other steps to reduce the risks were taken. The plea of guilty acknowledges that it was reasonably practical to deal with the known risk. In this case, I take that to be, shut down the electricity in some meaningful way.
7. The prosecution of this matter commenced with charges being laid in June 2015. A contested committal proceeding commenced in March of 2016. The case could not resume because of the illness of the presiding Magistrate, and when it was finally re-listed in June this year, the issues between the parties were resolved and the company indicated a plea of guilty to the current charge.
8. Thomas Eckhart's parents attended court on the plea today, although no victim impact statements had been produced or tendered in evidence. Mr and
Mrs Eckhart are supportive of the operators of the defendant company.
9. All Seasons was founded in 2007 and incorporated in 2009. Mr James[[5]](#footnote-5) is its sole director. The company employs 11 people. It has no prior criminal convictions, nor any outstanding subsequent matter pending.
10. Subsequent to Mr Eckhart's tragic and totally preventable death, the company has instituted further employee training and completely ceased any activity proximate to live power lines. This apparently is the only incident in its ten year history.
11. The company is a sponsor of a child through World Vision and can be described as an otherwise good corporate citizen. I was informed that the company is financially successful and has the capacity to pay an appropriate fine. Mr Pulitz who appears for All Seasons informed me that the company turned over in excess of $1m in the last financial year.
12. The seriousness of the offence is determined by the extent of the relevant risk and an assessment of the steps taken to eliminate that risk. In my view, as I have said throughout the course of this hearing, the breach must be assessed as an upper middle level example of this offence.
13. There was a clear risk identified of death and/or serious injury, created by working so close to the live power lines. Although I have had some debate about this issue with Mr Pulitz, it appears to me that virtually nothing was done to reduce or eliminate that risk. It would appear that the company relied upon the skill of Mr Eckhart to avoid having branches coming in touch with the electric wires. Obviously that failed.
14. I take into account the company's plea of guilty. The plea demonstrates corporate remorse for the crime and has saved the community the cost of a criminal trial. Witnesses and the family of Mr Eckhart have been spared the trauma of such a trial. The company is entitled to a reduction to the sentence I would otherwise impose to reflects its plea of guilty, and I will return to the effect of that reduction subsequently.
15. I take into account the company's lack of prior criminal history in its otherwise good Worksafe history.
16. I take into account current sentencing practices insofar as they can be ascertained in this case. The cases referred to me by the prosecution and indeed by Mr Pulitz in his submissions are Magistrates' Court cases and do not involve death.
17. Pursuant to s.5 of the *Sentencing Act,* the High Court has made it clear that current sentencing practices is just one factor to be considered amongst many.
18. Clearly general deterrence must be the predominant sentencing factor in cases of this sort. Corporate employers need to understand that substantial penalties await company convicted of offences against the *Occupation Health and Safety Act* of 2004. The maximum penalty of $1,299,000 fine demonstrates how seriously Parliament views breaches of this act.
19. The fine I am about to impose should in no way be seen as placing a value on the life of Mr Thomas Eckhart. No penalty could ever do that. This offence involves the court's assessment of risk. As I see it, I view the risk as obvious and the failure to deal with it as serious.
20. In all the circumstances, the company is convicted and is fined the sum of $150,000.
21. Pursuant to s.6AAA of the *Sentencing Act*, I indicate that but for its plea of guilty, I would have imposed a fine of $180,000.
22. COUNSEL: As Your Honour pleases.
23. HIS HONOUR: You need time?
24. MR PULITZ: We will need about three months to get that released.
25. HIS HONOUR: I will make a formal stay of six months.
26. MR PULITZ: As Your Honour pleases.
27. HIS HONOUR: All right, I will adjourn until 10 o'clock, isn't it?
28. ASSOCIATE: Yes.
29. HIS HONOUR: Ten o'clock Monday.

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1. Owen James is a pseudonym. [↑](#footnote-ref-1)
2. All Seasons Arbory Pty Ltd is a pseudonym. [↑](#footnote-ref-2)
3. Thomas Eckhart is a pseudonym. [↑](#footnote-ref-3)
4. Ferrars street Port Melbourne is a pseudonym. [↑](#footnote-ref-4)
5. Mr James is a pseudonym. [↑](#footnote-ref-5)