

DIRECTOR OF PUBLIC PROSECUTIONS

v

KILVINGTON GRAMMAR SCHOOL LTD

&

WORLD CHALLENGE EXPEDITIONS PTY LTD

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JUDGE: Her Honour Judge Ellis  
WHERE HELD: Melbourne  
DATE OF HEARING: 11 December 2024  
DATE OF SENTENCE: 29 January 2025  
CASE MAY BE CITED AS: DPP v Kilvington Grammar School Ltd & Anor  
MEDIUM NEUTRAL CITATION: [2025] VCC 21

### REASONS FOR SENTENCE

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Subject: CRIMINAL LAW  
Catchwords: Sentence – one charge of failure to ensure persons other than employees not exposed to risk to health and safety arising from employer’s undertaking – early plea of guilty – no prior convictions  
Legislation Cited: *Occupational Health and Safety Act 2004* (Vic); *Sentencing Act 1991* (Vic);  
Cases Cited: *DPP v Frewstal Pty Ltd* (2015) 47 VR 660; *Dotmar Epp Pty Ltd v The Queen* [2015] VSCA 241; *DPP v Vibro-Pile (Aust) Pty Ltd* [2016] VSCA 55; *Orbit Drilling Pty Ltd & Anor v The Queen* [2012] VSCA 82  
Sentence: Kilvington Grammar convicted and fined a total of \$140,000.00 - World Challenge Expeditions convicted and fined a total of \$150,000.00

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APPEARANCES:

	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr D. Gurvich KC and Ms Office of Public Prosecutions K. Grinberg	
For Kilvington Grammar Ltd	Ms E. Holt and Ms C. Foot	Colin Biggers & Paisley

For World Challenge Expeditions Mr R. O'Neill SC  
Pty Ltd

Gilchrist Connell

HER HONOUR:

## Introduction

- 1 Kilvington Grammar School Ltd and World Challenge Expeditions Pty Ltd have both pleaded guilty to one charge of failing to ensure that persons other than employees were not exposed to risks to their health and safety arising from the conduct of the employer's undertaking, contrary to s 23(1) of the *Occupational Health and Safety Act 2004* (Vic) (***the OHS Act***).
- 2 The maximum penalty for the offence contrary to s 23(1) of the *OHS Act* committed by a body corporate is 9000 penalty units.<sup>1</sup> At the time of the offence, the maximum penalty equated to \$1,450,710.00.

## Overview

- 3 Kilvington Grammar School Ltd ('Kilvington Grammar') is an 'independent, co-educational Baptist school' located in Ormond, Victoria. The school operates as a not-for-profit organisation providing a Christian co-educational learning community for students ranging from early learning up to Year 12.
- 4 World Challenge Expeditions Pty Ltd ('World Challenge') is an experiential school expedition company that provides secondary schools and their students with "Leadership Expeditions, Learning Service Journeys and Curriculum Tours",<sup>2</sup> such as international expeditions to locations including Asia.
- 5 These charges relate to a student trip to Vietnam in September 2019 that was conducted by World Challenge and attended by eight Year 10 students from Kilvington Grammar, and two teachers. One of the students who attended this trip was 16-year old Lachlan Cook, a Type 1 diabetic. During the trip, Lachlan

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<sup>1</sup> At the time of these offences, the value of one penalty unit was \$161.19.

<sup>2</sup> World Challenge Expeditions Pty Ltd, 'Defence Plea Submissions', 6 December 2024 (Exhibit WC1) [24].

developed a complication with his diabetes and as a result, tragically lost his life on 4 October 2019.

## **Circumstances of Offending**

### *Lead up to Trip*

- 6 The circumstances of the offending were set out in a comprehensive Summary of Prosecution Opening for Plea dated 13 November 2024.<sup>3</sup>
- 7 Lachlan Cook was born in May 2003 and suffered from Type 1 diabetes. He was a Year 10 student with Kilvington Grammar School. Sometime in 2018, when Lachlan was in year 9, he and his parents decided that Lachlan would attend a school trip run by World Challenge the following year to Vietnam.
- 8 In May 2018, World Challenge ran a 'launch meeting', which was attended by students who were interested in participating in the trip to Vietnam. A subsequent meeting, also run by World Challenge, was held on 30 July 2018 to allow applicants for the trip to meet with a World Challenge representative.
- 9 On 25 March 2019, a training day was held at Kilvington Grammar, conducted by Ms Anna Walsh, the World Challenge expedition leader who would accompany students to Vietnam that year, as well as teachers from Kilvington Grammar. A further pre-departure meeting was held on 13 May 2019, also run by a World Challenge representative, which parents were invited to attend.
- 10 Given Lachlan's medical condition, World Challenge obtained two medical clearance forms for Lachlan:

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<sup>3</sup> Director of Public Prosecutions, 'Summary of Prosecution Opening: DPP v Kilvington Grammar School Ltd & World Challenge Expeditions Pty Ltd', 13 November 2024 (Exhibit A).

1. A World Challenge diabetes questionnaire, completed by Dr Croatto on 29 June 2019; and
  2. A World Challenge medical management form: diabetes, completed by Lachlan's parents.
- 11 On 23 August 2019, the Dean of Operations of Kilvington Grammar, Alex Giamoukoglou, met with World Challenge Regional Manager Michelle Lionello to discuss Ms Giamoukoglou's role as the school's emergency contact for the trip, also known as the "all hours contact".
- 12 During this meeting, Ms Giamoukoglou asked Ms Lionello about the school student personal information forms (containing students' medical details and history), and asked whether the school should have parents complete those forms. Ms Lionello stated that World Challenge looked after this and had already obtained all of the students' medical information and histories.
- 13 On 11 September 2019, one week prior to the beginning of the trip, another session was conducted by Ms Lionello where, among other things, medication was discussed and collected from each student. The two teachers from Kilvington Grammar who were also attending the trip – Mr Matt Brinson and Ms Mel Gregory – were also in attendance.

#### *Trip to Vietnam*

- 14 On 14 September 2019, the eight students from Kilvington Grammar, including Lachlan, the two teachers, and Ms Walsh from World Challenge, departed Melbourne for Vietnam. On this day, Ms Walsh spoke with Lachlan about his diabetes and Lachlan explained how he self-managed the condition. Each day on the trip, Ms Walsh would check with Lachlan about his blood glucose levels. Lachlan reported that they were either 'good' or 'fine'.

- 15 On 26 September 2019, at around 8am, when the group were in Hoi An, Vietnam, Lachlan reported to Ms Walsh that he had vomited twice that morning, that he could not hold down any liquid, and that he thought it was due to something that he had eaten. One of the Kilvington Grammar teachers, Ms Gregory, was also feeling unwell and she and Lachlan stayed at the hotel while the rest of the group went for breakfast.
- 16 On the same day, the group caught a bus from Hoi An to Hue. Lachlan vomited twice during the journey, and so Ms Walsh moved Lachlan to the front of the bus where she could monitor his liquid intake. Ms Walsh mostly gave Lachlan small sips of water, and she also gave him small amounts of Sprite. Ms Walsh asked Lachlan twice during the bus trip whether his blood glucose levels were fine, and he said that they were.
- 17 When the group arrived at Hue, Lachlan had not vomited for some time. He next vomited at 3:30pm saying that he had consumed too much liquid. At 4pm, Lachlan and Ms Gregory remained at the hotel while the rest of the group went on an excursion to a market.
- 18 Sometime after 5pm, Lachlan called Mr Brinson from Ms Gregory's phone. He had woken up with abdominal pain and went to see Ms Gregory who then blacked out when she got up to get some ice for Lachlan. The group then returned to the hotel.
- 19 When the group arrived back at the hotel, Lachlan was vomiting and complaining of thirst and sore ribs. Mr Brinson suggested that they call the World Challenge operations centre, or a doctor. Ms Walsh then called the World Challenge operations centre and spoke with Mr Stuart Thomas, another World Challenge expedition leader who is trained in first aid but is not a medical professional. During this call, Ms Walsh did not mention that Lachlan suffered from diabetes.

20 Ms Walsh continued to communicate with Mr Thomas via the messaging application 'Viber'. Mr Thomas requested that Lachlan be given Hydrolyte, to which Ms Walsh responded that she had already given that to Lachlan. At around 7.30pm in Vietnam, Ms Walsh sent an additional message to the operations centre, stating:

“I just want to check nothing of what im doing changes due to his diabetes 1 and his bloods are currently high which we are trying to bring down...”

21 Ms Walsh did not receive a response to this message until after she had fallen asleep. She did not see the response until she awoke the next morning. Mr Thomas did not see this message until four hours after it was sent; he does not know whether this is because the message did not reach him until then or whether he failed to notice it. Mr Thomas did not know that Lachlan suffered from diabetes until he read this message from Ms Walsh. Mr Thomas replied to Ms Walsh by messaging her that Hydrolyte contains carbohydrates and that dehydration in diabetics can cause 'bloods to go high'.

22 Mr Thomas made further attempts to contact Ms Walsh but was unable to contact her again prior to finishing his shift.

23 Upon becoming aware of Lachlan's diabetes, Mr Thomas reclassified the situation from severity 4 (minor medical issue not requiring professional medical review) to severity 3 (medical issue with complications requiring professional medical review and/or the use of prescription medication). Mr Thomas states that if he had initially known that Lachlan suffered from diabetes it would have been an 'immediate red flag' to him. In his handover email to the operator taking over his shift, Mr Thomas marked the incident as urgent and wrote that the next operator was to call for an update at 1am UK time, noting that 'we need a reassessment rapidly'.

- 24 At 7pm on the same day, Mr Brinson called Lachlan's mother, Ms McMahon, and told her what was occurring. He purportedly told her that Lachlan's blood sugar level was 21. Ms McMahon purportedly responded that was a bit high and advised him to check Lachlan's insulin levels every half an hour. Ms McMahon recalls this conversation differently – she recalls being told that Lachlan's blood sugar level was only 16.
- 25 After this phone call, Mr Brinson asked Lachlan at what stage they should become worried, to which Lachlan responded if his blood sugar levels exceeded 25.
- 26 At this stage, Ms Walsh started monitoring Lachlan's blood sugar, heart rate and temperature every 30 minutes. At one stage his blood sugar reading dropped to 17, and it remained at this level until approximately 9.45pm.
- 27 Later that evening, Lachlan complained of fast breathing and vomited again after drinking large gulps of water. As a result Ms Walsh gave Lachlan some ondansetron. Lachlan's condition then appeared to improve and he went to bed. Before he went to bed, Ms Walsh asked him about monitoring his blood glucose levels overnight. Lachlan told her that he would wake up if the level got too high or too low and that he could adjust it himself, or alternatively that he could telephone her or come to her room if he needed help.
- 28 The following morning (27 September 2019) at 5am Mr Brinson went to check on Lachlan. Lachlan was breathing fast but reported that he had slept most the night and had not vomited. Mr Brinson asked Lachlan to check his blood sugar levels, and Lachlan responded that he was low in energy. As this happened, Lachlan's speech became slurred. Mr Brinson gave Lachlan a small amount of water and a small amount of Sprite.



- 29 Mr Brinson then proceeded to check Lachlan's blood sugar levels. The reading indicated that they were high (27+). Mr Brinson checked again 2 minutes later and the reading remained the same. He was concerned and went to wake Ms Walsh.
- 30 When Ms Walsh checked on Lachlan, he became nonresponsive: he was able to squeeze Ms Walsh's hand and sit up, but he was unable to stand. A taxi was called to take Lachlan to hospital.
- 31 Lachlan arrived at the hospital around 6am and short after this, Lachlan stopped breathing. CPR was performed on Lachlan for approximately 30 minutes, and a defibrillator was utilised. Lachlan was then connected to a number of machines.
- 32 Whilst this was happening, Ms Walsh returned to the hotel at around 8:00am and later continued the trip with the rest of the group by travelling to Hanoi. Mr Brinson remained in the hospital with Lachlan.
- 33 At around 3:30am on 28 September 2019 Lachlan was flown to Bangkok Hospital along with Mr Brinson, where he stayed for the next 5 days. Meanwhile, Lachlan's mother, father and sister travelled to Bangkok where he remained unconscious.
- 34 On 2 October 2019, Lachlan was transferred via air ambulance to the Royal Children's Hospital in Melbourne. He arrived in Melbourne on 3 October 2019.
- 35 Professor Trevor Duke, the consultant on duty at the time Lachlan was admitted, conducted a number of tests on Lachlan. On 4 October 2019, it was confirmed that Lachlan had suffered brain death. His life support was turned off.
- 36 The immediate cause of death was subsequently determined to be hypoxic/ischaemic encephalopathy (brain death) in the context of diabetic ketoacidosis (DKA).

- 37 An inquest hearing was conducted in relation to Lachlan's death in March 2022. Professor Timothy Jones, Co-Director Medicine and Consultant Endocrinologist, Perth Children's Hospital, provided a report to the Coroner. In his report, Professor Jones stated that the diabetes management and action plans that had previously been obtained by Kilvington Grammar (but were not taken on the trip) provided appropriate guidance on hypoglycaemia and hyperglycaemia, and that utilisation of this plan would have led to an earlier diagnosis of diabetic ketoacidosis. Professor Jones also stated that Lachlan should have had close glucose monitoring and ketone testing from when he first reported being unwell. If ketones are elevated then it indicates a deteriorating metabolic condition that requires attention. At the early stages this is readily reversible with basic measures such as extra insulin and fluids. Ketone testing can then confirm improvement or not.
- 38 On 28 June 2022 Worksafe Inspector Greg Rodgers commenced an investigation.
- 39 Both Kilvington Grammar and World Challenge were charged pursuant to the *OHS Act* on 3 April 2024.
- 40 Kilvington Grammar resolved the matter on 11 July 2024 at the first committal mention.
- 41 World Challenge resolved the matter prior to the third listing of a committal mention on 1 November 2024.

### **Circumstances of the breach**

#### *World Challenge Expeditions Pty Ltd – Ms Anna Walsh*

- 42 Ms Walsh is an outdoor educator with a Bachelor of Sports and Leisure from Waikato University. She had a certificate in Wilderness First Aid from Swinburne University of Technology that was valid at the time of the trip to Vietnam. As part

of her employment with World Challenge Expeditions, she had attended and passed a World Challenge potential leadership course in October 2017.

- 43 World Challenge did not provide Ms Walsh with any specific advice or additional training to assist with her knowledge or treatment of diabetes.
- 44 In September 2019, Ms Walsh completed an online Leader Competency Test (Medical) organised by World Challenge and she received a score of 81.8%. The test consisted of 11 questions – none of which related to diabetes. In feedback provided to Ms Walsh by World Challenge, she was informed that it was not necessary for her to disclose any pre-existing medical conditions when contacting the Operations Centre.
- 45 Ms Walsh was also provided a copy of the World Challenge Leader Manual. The Manual sets out the responsibilities of the leadership team and states that the adult leadership team all have the collective responsibility for providing first aid.
- 46 The Medical Handbook was also provided, which outlines a number of common injuries or illnesses that may occur on an expedition. This handbook was also made available to the teachers on the trip. Notably, the handbook did not contain any information on diabetes.
- 47 World Challenge has an operations centre that is staffed 24/7 during expeditions and provides assistance for expeditions. World Challenge has an Incident Management Plan which details incident handling protocols, policies and procedures. The operations centre uses an incident management system that includes a range of Standard Operating Procedures (**SOPs**) that are applicable to various situations. There was no diabetes specific SOP in place at the time of Lachlan's death.

48 World Challenge has pleaded guilty to the charge on the basis of failing to provide expedition leaders such as Ms Walsh with information, instruction and training in relation to:

(a) Type 1 diabetes and the warning signs of possible diabetic complications and the steps that should be taken in response; and

(b) that when contacting the World Challenge Operations call centre regarding a medical issue of a participating student, that they should inform the call centre of any pre-existing medical conditions of the student.

*Kilvington Grammar School – Mr Matt Brinson and Ms Mel Gregory*

49 Both Mr Brinson and Ms Gregory were trained in CPR and in providing first aid, which was current at the time of the trip. The first aid training course material addresses diabetes by providing brief information on how to recognise and manage hypoglycaemic and hyperglycaemic episodes.

50 The school had a diabetes management and action plans for Lachlan. However, these were not taken on the trip, nor were they provided to Mr Brinson or Ms Gregory.

51 Kilvington Grammar School employed a school nurse who conducted a medical alert session for staff biannually, and at each session Lachlan's diabetes was addressed. In 2019, Kilvington Grammar had a system in place for school camps whereby each student with diabetes, including Lachlan, would have a staff buddy to supervise their individual, diabetic needs on that camp. The staff buddy would receive additional diabetes training and attend a pre-camp meeting with the school nurse. However, on the trip to Vietnam, neither Mr Brinson or Ms Gregory were assigned as Lachlan's buddy and neither received any additional training or information from the school nurse prior to the trip regarding Lachlan's diabetes.

52 Kilvington Grammar has pleaded guilty to the charge on the basis of failing to provide teachers with information, instruction and training in relation to two reasonably practicable measures:

- (a) Firstly, providing one or more of the teachers attending the trip with additional training and instruction in relation to Type 1 diabetes, the warning signs of possible diabetic complications and the steps that should be taken in response; and
- (b) Secondly, requiring teachers attending the trip to take Lachlan Cook's diabetes management and action plans.

### **Sentencing Considerations**

53 In determining the sentence, there are a number of matters which I must take into account, including the maximum penalty applicable. I have had the benefit of detailed submissions on behalf of the prosecution and each of the defendant companies, and I take into account the matters raised in those submissions and on the plea hearing.

54 It is important to make clear that the sentence I impose can in no way be a measure of the worth of Lachlan Cook's life. Rather, the sentence I must impose reflects the large number of factors which I am required by law to take into account.

### **Objective Seriousness of the Offending**

55 In *DPP v Frewstal Pty Ltd*, the Court of Appeal summarised the guiding sentencing principles in cases where death or serious injury has occurred as a result of a breach of the *OHS Act*.<sup>4</sup>

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<sup>4</sup> (2015) 47 VR 660 at [127] per Priest and Kaye JJA (*'Frewstal'*).

56 First, unlike cases of unlawful homicide, the occurrence of death or serious injury is not an element of the offences charged. An accused is punished according to the gravity of the breach of duty owed under the *OHS Act*, not according to the result or consequences of the breach.

57 Secondly, the gravity of the breach is measured by two factors:

- the seriousness of the breach itself (that is, the extent to which the defendant has departed from its statutory duty); and
- the extent of the risk of death or serious injury which might result from the breach.

58 Thirdly, an assessment of the extent of the risk itself involves consideration of two factors:

- the likelihood of the occurrence of an event as a result of the breach (such as the event that occurred in the particular case) endangering the safety of employees or others; and
- the potential gravity of the consequence of such an event (in particular, whether there is a risk of death or serious injury).

59 Fourthly, the fact that the breach in the particular case resulted in death is relevant only in the sense that it might manifest or demonstrate the degree of seriousness of the relevant threat to health or safety resulting from the breach.

60 In *Dotmar Epp Pty Ltd v The Queen*,<sup>5</sup> Priest JA expressed the general approach in cases where death or serious injury may result, or has resulted from the breach:

*“The OHS Act is concerned generally with risks to health and safety; and,*

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<sup>5</sup> [2015] VSCA 241 at [22].

*under Part 3, concerned specifically with the duties owed with respect to health and safety. It is the extent of the failure to ensure that employees are not exposed to risk to their health and safety which determines the objective gravity of the offence. The consequences of the failure generally do not. That is not to say that the fact of death or injury occurring is necessarily irrelevant. The occurrence of an accident, resulting in death or injury of a particular kind, may inform an assessment of, first, the existence of the risk, and, secondly, the nature and seriousness of that risk”.*

61 I now turn to the objective seriousness of the offence here. This is the most important factor in determining the appropriate sentence to be imposed for a contravention of the *OHS Act*. When assessing the seriousness of the breach, there are three factors to consider:

- (a) The extent of the departure from the duty that is owed, including the level or the extent of the disregard for the safety to whom the duty was owed. This involves an assessment of the degree to which the offender departed from the duty owed to avoid the risk, in particular “the measure of evidenced disregard concerning ... safety”;
- (b) The extent of the risk to health and safety thereby created, in particular “the foreseeable potential consequences” of the breach; and
- (c) The likelihood or risk of potential harm occurring.

#### *World Challenge Expeditions*

62 The prosecution submits that World Challenge’s departure from its statutory duty was moderate to high. It is not always helpful to place a label when categorising the gravity of offending. Rather, the court must look at the circumstances. Notwithstanding this, I agree with the prosecution’s assessment. As Mr Gurvich on behalf of the Director submitted, World Challenge undertook to provide care for

students on tours, including Lachlan Cook. This included providing an expedition leader to lead the overseas tours, and an operations call centre that was available at all times to provide assistance to expedition leaders. World Challenge was aware that Lachlan Cook had Type 1 diabetes and was attending the trip to Vietnam. Despite this, World Challenge did not provide information, instruction and training to expedition leaders in relation to Type 1 diabetes and the warning signs of possible diabetic complication and the steps that should be taken in response.

- 63 The relevant leaders' medical competency test conducted by World Challenge did not relate to diabetes; nor did the medical handbook did not contain information relating to this condition. Consequently, expedition leaders were not equipped to recognise the warning signs of possible diabetic complications so as to be able to take appropriate action. This, as the prosecution submits, was clearly borne out by Ms Walsh not having sufficient knowledge about the risk of high glucose levels, and she was unable to recognise Lachlan's symptoms as relating to possible diabetic complications.
- 64 I accept, as submitted on behalf of World Challenge by Mr O'Neill, that there were procedures for managing students' medication and health conditions, which included a diabetics specific form designed to collect information for the management of the condition and ensuring that those students with diabetes were medically cleared to travel.
- 65 As submitted by World Challenge, Ms Walsh discussed Lachlan's diabetes and how it was to be managed with him before the trip and she regularly checked in with him about his glucose levels, and monitored his liquid intake. Ms Walsh did call the Operations Centre, which was available 24/7 with on-call medical consultants. She did so in accordance with World Challenge's procedures, though it seems this was after Mr Brinson suggested it.



- 66 But when contacting the Operations Centre regarding Lachlan's presentation, Ms Walsh did not inform Mr Thomas that Lachlan had Type 1 diabetes. Training provided to Ms Walsh instructed her that it was not necessary to disclose pre-existing medical conditions when contacting the Operations Centre, as those details would already be available. Instructing leaders to disclose pre-existing conditions when contacting the Operations Centre was, as the prosecution submits, a simple and effective way towards ensuring correct advice was provided to leaders.
- 67 The Operations Centre was unaware of Lachlan's diabetes when Ms Walsh first spoke to them. Had Ms Walsh informed the Operations Centre of Lachlan's pre-existing medical condition when she first contacted them for advice, more appropriate care would have been provided to Lachlan. Instead there was then a series of delays and lack of communication between Ms Walsh and the Operations Centre. I accept, as was submitted by Mr O'Neill, that Mr Thomas followed procedures given the information he had, and that he attempted to contact Ms Walsh once he became aware of Lachlan's diabetes. Sadly, it was too late.
- 68 There was a risk of serious illness or death if diabetic students fell ill whilst on a trip. The lack of information, instruction and training provided to expedition leaders in relation to this diabetic condition and the warning signs of associated possible complications and the steps that should be taken in response, did indeed constitute a disregard for that risk. The prosecution submits that this was a blatant disregard.
- 69 World Challenge submits that it was not a matter of the company disregarding the risk, but rather, that the provision made for those with diabetes was deficient. That here there were attempts made in good faith to obtain clearance and to ask for information, however they were not adequate. Mr O'Neill submits that rather than

it being a thoughtless failure by World Challenge to address the risk, more thorough steps should have been taken.

- 70 At a minimum, I consider there was a lack of appreciation for what the risk constituted. Indeed I accept that there has been a disregard for the risk. Here, the expedition leader Ms Walsh, given her inability to recognise the warning signs, did not understand the possible steps that should be taken in response to those diabetic complications. Had she been provided with this information, she would have known to measure Lachlan's ketone levels and seek urgent medical attention. Again, an instruction to disclose any pre-existing medical conditions was a way to ensuring proper and correct medical advice could be provided.
- 71 I take into account, as submitted on behalf of World Challenge that the systems and procedures were in accordance with and had been audited as compliant with, the Expedition Providers Association standards.
- 72 With respect to the likelihood of the risk eventuating, there is an obvious risk that students engaging in trips in foreign countries may experience travel-related illnesses. For students with Type 1 diabetes, there was a heightened risk of diabetic complications resulting in serious illness or death if the appropriate measures were not taken. I accept that likelihood of the risk eventuating was moderate, as submitted by the prosecution.
- 73 The potential gravity of the consequence of the risk eventuating was high, namely, the serious illness or death of a student participating in the trip. The measures alleged in the charges would have substantially reduced the risk. Here the prosecution does not contend that it can prove beyond reasonable doubt that the omissions of World Challenge caused Lachlan's death. However, had appropriate action been taken at an early stage, the risk of Lachlan dying would have been reduced.

- 74 In assessing the seriousness of the offence I take into account the impact of Lachlan's death as illustrated by the gravity of the potential consequences.
- 75 Lachlan's mother, Ms McMahon in describing her relationship with her son, as well as his relationship with his father, Peter and sister Isabel, referred to Lachlan's kindness, compassion, consideration of others, and his courage and determination in the face of adversity.
- 76 Lachlan's mother describes the dreadful ordeal that no parent should have to experience, of travelling to Thailand and spending 5 days in hospital with her unconscious child, then flying home with her very unwell and unconscious son to the Royal Children's Hospital whereupon it was confirmed that his condition was not survivable.
- 77 Overall I consider the gravity of World Challenge's breach to be significant, and although there is not a great disparity in terms of culpability between World Challenge and Kilvington Grammar, I have determined that the penalty imposed should be greater with respect to World Challenge having regard to the matters I have discussed, namely the company's moderate to high breach of its statutory duty, and taking into account all relevant matters.

#### *Kilvington Grammar*

- 78 The prosecution submits that Kilvington Grammar's departure from its statutory duty was moderate. I accept this.
- 79 Kilvington Grammar's undertaking included providing care and supervision for students both while at school and when on school trips.
- 80 It is important to note here that period of the contravention is between the date Kilvington received Lachlan's diabetes management and action plan (29 April

2019) and the date the students left for Vietnam (14 September 2019). The conduct of Kilvington Grammar whilst in Vietnam is not the subject of any charge.

81 It is acknowledged by the prosecution, and I accept, that Kilvington Grammar had in place a number of measures aimed at addressing risk to students with diabetes. The school had diabetes management and action plans for Lachlan. The school employed a nurse who conducted a medical alert session for staff twice a year and at each session Lachlan's diabetes was addressed. In 2019, Kilvington Grammar had a system in place for school camps which included the use of a buddy system.

82 As Ms Holt on behalf of Kilvington Grammar noted, prior to the World Challenge trip's departure to Vietnam, Kilvington Grammar met with World Challenge representatives and asked where the student's medical information forms, details and histories were, and whether World Challenge needed the school's documents including medical information. Kilvington Grammar was told that World Challenge had looked after this, had obtained the information, and that it was in the World Challenge system.

83 Kilvington Grammar was also told by World Challenge that the Expedition Leader was responsible for the medical care of the students on the trip to Vietnam, and that the Operations Centre would manage any serious incidents, develop a response plan and engage external agencies including medical assistance if required, and would have access to emergency medical advice, treatment and transport 24 hours a day. World Challenge provided Ms Walsh with the students' medical information including completed medical management forms, which she read and relied upon to inform her management of Lachlan.

84 As Kilvington Grammar submits, two teachers were assigned to travel with Lachlan and the other students to Vietnam to assist with wellbeing, pastoral care and supervision of the students. The two teachers had current and up to date first aid

training, which addressed diabetes. However, for the trip to Vietnam, neither of the teachers were assigned to be Lachlan's buddy to supervise him in managing his diabetes nor did they receive any additional training or information from the school nurse prior to the trip.

- 85 Lachlan's diabetes management and action plans that had previously been obtained by Kilvington Grammar, were not taken on the trip. Those plans provided appropriate guidance on hypoglycaemia and hyperglycaemia. Utilisation of this plan would have led to an earlier diagnosis of diabetic ketoacidosis.
- 86 Additional training in Type 1 diabetes was not provided to teachers attending overseas trips organised by third parties. This Ms Holt submits was based on Kilvington's understanding that all medical issues would be managed by a third party. However, as Kilvington Grammar accepts, this was not sufficient to mitigate the risk to an acceptable level.
- 87 Providing one or more of the teachers attending the trip with additional training and instruction in relation to Type 1 diabetes; and requiring teachers attending the trip to take Lachlan's diabetes management and action plans were both simple measures that were available to Kilvington Grammar to reduce the risk of serious illness or death to Lachlan Cook.
- 88 Ms Holt submits that this is not a case of inexplicable oversight or blatant disregard for safety on the part of Kilvington Grammar. Rather, the school understood that the medical management of the students was being taken care of by a third party whilst overseas. It is submitted these circumstances demonstrate the extent of the departure from the duty owed by Kilvington was at the lower end of the spectrum.
- 89 The prosecution submit that it was **moderate**. In terms of assessing the extent of the departure from the duty owed by Kilvington, I accept that it was moderate, but

again I am mindful of labelling or categorising the seriousness of the offending. In making this assessment I have had regard to the fact there were some systems in place, reflecting the seriousness with which the school regarded student safety and welfare.

- 90 Again, having regard to the likelihood of risk eventuating, as I have already found, there is a clear risk that students on overseas trips may experience illness. For students with Type 1 diabetes, there was a heightened risk of diabetic complications resulting in serious illness or death if appropriate preparatory and response measures were not taken.
- 91 Whilst Kilvington submits the likelihood of the risk eventuating was low, I consider that it was **moderate**. I also accept that the evidence does not establish that, had the reasonable steps been taken, Lachlan's death would necessarily have been avoided, given the many unknown and unquantifiable factors.
- 92 The prosecution submits that the potential gravity of the consequence of the risk eventuating was high, namely, the serious illness or death of a student participating in the trip. I agree. The measures alleged in the charges would have substantially reduced the risk. Again, the prosecution does not contend that it can prove beyond reasonable doubt that the omissions of Kilvington Grammar caused Lachlan's death. However, had appropriate action been taken at an early stage, the risk of Lachlan dying would have been reduced.
- 93 As I have already discussed, the impact of Lachlan's death can be taken into account in assessing the seriousness of the offence by its illustration of the gravity of the potential consequences.

### **Background and circumstances of the defendant companies**

*World Challenge Expeditions Pty Ltd*

- 94 World Challenge comes before the court with no prior convictions of any kind.
- 95 The company was founded in 1987 in the UK and has evolved significantly, offering secondary students various overseas trips. According to the submissions filed, for over 38 years, World Challenge has taken more than 200,000 students on journeys across the globe encouraging students to step outside their comfort zones enhancing personal and educational growth. The company has operated for 21 years in Australia and is part of the Travelopia group.
- 96 Since this incident and over the course of the pandemic, World Challenge's business has shrunk dramatically. In 2019, it had 135 employees globally and 45 in Australia. Today, it has 65 globally and 18 employees in Australia. It engages ground partners in the countries visited as well as tour leaders usually from the country where the school is located.
- 97 World Challenge is a founding member of the Expedition Providers Association ('EPA') and is said to adhere to a world comprehensive governance framework for school expeditions via the EPA. Full EPA accreditation requires rigorous compliance with British Standards and a Code of Practice. Accredited members are subject to regular external audits. These UK standards are said to be the most sophisticated in providing detailed and meaningful safeguards for student safety – purportedly setting the standard for school expeditions globally. World Challenge is subject to a detailed external audit every 2 years, with the most recent inspection being November 2023. In addition, World Challenge's safety management system and incident management plan was audited by Travelopia's central health and safety team in October 2020 and February 2024. World Challenge reportedly achieved the highest rating of any Travelopia brand in both of these audits.
- 98 I accept that World Challenge takes its responsibilities towards student safety seriously and has adhered to the relevant industry guidelines. There were some

measures in place regarding students being required to provide detailed information regarding medical history, travel approval by their doctor and a complete medical management plan outlining the support they would need during the trip. This information was provided to the school teachers and expedition leaders supervising the trip. Students typically carried and managed their own medications with supervision from the adult leaders on the trip. Expedition leaders have first aid training, are provided with satellite communications equipment, a medical handbook and a comprehensive medical kit. World Challenge had an operations centre on call who had access to the services of Healix, an international medical assistance company.

99 I accept that World Challenge is of good character, given the absence of any prior convictions. This is significant in light of the risks associated with its activities over many years. I have had regard to the matters set out on behalf of World Challenge including that the company contributes to many dozens of its non-profit community and conservation partners around the world, including wildlife conservation programs, regeneration initiatives and infrastructure projects. This is in addition to numerous community initiatives and conservation programs involving a very significant number of volunteer days and associated financial contribution which is substantial.

100 I accept that World Challenge is remorseful. This is reflected in both the early plea of guilty and in the company's conduct since the offending.

101 In the aftermath of Lachlan's death, World Challenge offered and provided counselling for the staff involved. The managing director Mr Fletcher immediately flew to Bangkok to manage the incident and be with Lachlan's family until his return home. Mr Fletcher and staff attended Lachlan's funeral, sourcing wristbands for all attendees to remember Lachlan, as requested by Lachlan's mother.



- 102 I accept that World Challenge now places much more emphasis on students with complex pre-existing health conditions to ensure that more extensive measures are in place to manage those conditions while students are on an expedition.
- 103 As set out in the prosecution opening, the changes made by World Challenge include:
- (a) The medical management form for diabetes being amended so that:
    - (i) Specific information is sought in relation to hypoglycaemia and hyperglycaemia;
    - (ii) Specific information is sought in relation to measuring ketones; and
    - (iii) The signs, symptoms and level of risk associated with DKA are noted on the form, including the need to seek urgent medical assistance.
  - (b) Factsheets have been created and included with each of the medical management forms to provide the adults who are supervising students on expeditions with a greater awareness of the relevant medical condition.
  - (c) A field has been added into all medical standard operating procedures ('SOP') to prompt the operator to confirm that they have checked the student's past medical history.
  - (d) A diabetes specific SOP was introduced in 2021.
  - (e) Changes have been made to the World Challenge incident management system so that if an incident is created in the system for a student who has a medical management form saved on the system, an alert will pop up to notify the operations centre of this.

- (f) A system is also being implemented requiring the operations centre operator to confirm that they have been able to cross-check the student's medical history with the expedition leader.
- 104 Further measures have been introduced including that World Challenge directly books accommodation and transport. Greater steps are now in place to ensure cross references between students cleared for travel between World Challenge and relevant school staff members. The Leadership Manual and various documents and communications are designed to ensure that all parties including expedition leaders and school staff are aware of the shared responsibility for the safety and wellbeing of students during expeditions.
- 105 For all students with diabetes, World Challenge organises and attends a meeting with the relevant student and their parents, the school leaders, the World Challenge expedition leader and any school nurse; as well as providing expedition leaders and school leaders with online diabetes training if they are attending an expedition with a student with diabetes. Expedition leaders are instructed to keep their mobile phones on at all times, including overnight.
- 106 World Challenge accepted responsibility at an early stage and there was no contested committal held.
- 107 In each case, the plea of guilty demonstrates a willingness to facilitate the course of justice and is of strong utilitarian value. By pleading guilty, World Challenge has avoided the need for a lengthy and complex trial, in which witnesses would have had to relive the experience. I consider the plea of guilty by both World Challenge and Kilvington Grammar, to be a valuable one.

*Kilvington Grammar Ltd*

- 108 Kilvington Grammar is a company limited by guarantee and a registered charity. The school has been in operation for over 100 years having been founded in 1923; its' sole campus is in the suburb of Ormond in Melbourne. It is a not-for-profit organisation, established for the charitable object of conducting a Christian co-educational learning community.
- 109 Kilvington Grammar does not have any prior convictions, a factor which I take into account. This is significant given the many years over which the school has operated.
- 110 Kilvington has 830 students, and 181 members of staff, including teaching, administrative and maintenance staff. Kilvington has an extensive history and culture of social justice engagement and charitable works programs. This includes educating students about meaningful participation in charity work. Most recently, the school has supported several charities, raising a total of \$131,500 for those charities including Cancer Council, Asylum Seeker Resource Centre, the Lighthouse Foundation and Flying Fox.
- 111 At the time of the offence the School had policies and systems in place in relation to the safety of students with diabetes, including the training of teachers. Since Lachlan's passing, a comprehensive internal investigation and review was conducted. Significant steps were taken to review and improve existing policies and procedures.
- 112 Kilvington Grammar has introduced new policies and procedures, including specific policies for Diabetes Management Policy, as well as a Camps and Outdoor Education Policy, which requires the school nurse to remain involved in the preparation of all trips, including those involving third parties. It also requires third party providers to be provided with the copy of any action plan. Staff members attending school camps should 'understand that duty of care and pastoral

supervision of all students ultimately lies with Kilvington staff at all times during camp’.

- 113 There are further policies relating to Overseas Trip Procedures.
- 114 A Diabetic Ketoacidosis Fact Sheet: a list of its symptoms and dangers has been added to all diabetes action and management plans. Diabetes specific training seminars has also been provided to administrative/support and teaching staff.
- 115 Further, the School will ensure that all contracts with third party providers contain terms which state what actions the School wants the third party to take in relation to the medical management of students, irrespective of whether the third party is managing and coordinating the trip as a whole.
- 116 The Offsite Supervision Policy has been developed which explicitly states that the engagement of an external provider, no matter what her or his level of expertise, does not release the School from its obligation to ensure the safety of its students who participate in the excursion or activity.
- 117 Following Lachlan’s death the school arranged a Senior School assembly for students and parents to gather and reflect. A year later, a remembrance service was held for all students and staff who attended the trip. A Lachlan Cook Award has been established since 2020 recognising Lachlan’s key qualities of kindness, compassion and consideration of others, courage and determination, genuine leadership and a balance of inclusion and competition. The school gym now has a memorial plaque in what is called “Lachie’s Corner”.
- 118 In 2019, 2020 and 2021 Kilvington undertook fundraising for the Juvenile Diabetes Research Foundation (**JDRF**) in honour of Lachlan’s memory, raising significant funds.

119 I accept that Kilvington Grammar is remorseful. Again this is reflected in the school's conduct post offending and the plea of guilty at the earliest possible stage. This early plea has facilitated the course of justice. It has spared the witnesses the trauma of reliving events in giving evidence. The plea has a significant utilitarian value. The school is entitled to a significant discount for the plea of guilty.

### **Sentencing Considerations**

120 The Court of Appeal has repeatedly confirmed that in occupational health and safety prosecutions, general deterrence will “normally assume considerable significance” and is a “consideration of great importance”.<sup>6</sup> As the Court of Appeal stated in *Vibro-Pile*:<sup>7</sup>

*“... general deterrence is of particular importance in offending of this kind. The sentences imposed need to draw attention to the importance of workplace safety, and to send a message to employers that failure to eliminate or mitigate safety risks will attract significant punishment.”*

121 Denunciation and just punishment are also relevant sentencing purposes.

122 I accept that specific deterrence is of less significance in this case, in relation to both accused, having regard to the pleas of guilty, demonstrable remorse and that each defendant has taken remedial action since Lachlan's death. Both World Challenge and Kilvington Grammar have expressed their sincere remorse and sadness over Lachlan's passing.

123 Pursuant to section 52 of the *Sentencing Act 1991* (Vic), the Court must, ‘take into account, as far as practicable, the financial circumstances of the offender and the nature of the burden that its payment will impose.’

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<sup>6</sup> *Orbit Drilling Pty Ltd & Anor v The Queen* [2012] VSCA 82, [60].

<sup>7</sup> *DPP v Vibro-Pile (Aust) Pty Ltd* [2016] VSCA 55, 731 [233].

- 124 Here the parties accept the penalty must be a financial one.
- 125 Written submissions filed on behalf of World Challenge set out the company's financial position for the last three years. No submission is made that the company does not have capacity to meet a fine in the appropriate range. However, the court is urged to take into account that World Challenge has faced significant financial challenges as a result of the pandemic, from which it is now recovering.
- 126 Ms Holt for Kilvington submitted that Kilvington Grammar is a not-for-profit organisation and a registered charity with the Australian Charities and Not-for-profits Commission, established for the charitable object of conducting a Christian co- educational learning community. It is not a corporation that is run for profit. Financially, Kilvington is in a position to be able to pay a fine, however, Ms Holt submits that the nature of the school's undertaking and object is a relevant consideration in sentencing. I take this into account.

### **Whether a conviction should be imposed**

- 127 I turn now to the question of whether the court ought to impose a conviction. It is submitted on behalf of World Challenge that the court should exercise its discretion pursuant to s 8 of the *Sentencing Act 1991* and not impose a conviction.
- 128 Kilvington Grammar did not submit that a non-conviction disposition should be imposed in this case however, Ms Holt submits that if World Challenge does not receive a conviction, nor too should Kilvington Grammar.
- 129 Section 8 of the *Sentencing Act 1991* provides:
- (1) In exercising its discretion whether or not to record a conviction, a court must have regard to all the circumstances of the case including—
- (a) the nature of the offence; and

(b) the character and past history of the offender; and

(c) the impact of the recording of a conviction on the offender's economic or social well-being or on his or her employment prospects.

130 Mr O'Neill submits that the reputational consequences of the imposition of a conviction are relevant in a case such as this. World Challenge has already reportedly suffered significant reputational damage since Lachlan's death. World Challenge's ability to enter into arrangements with schools to take their students on expeditions is said to have been affected. World Challenge submits that it has undoubtedly lost contracts with schools because of the incident. Mr O'Neill contends that a conviction would inflict further reputational and financial damage. It is also likely to increase World Challenge's insurance premiums including workers compensation, Personal Accident and Travel Insurance and D&O insurance.

131 Mr O'Neill submits that in light of the reputational consequences of a conviction, in conjunction with other matters raised in mitigation, in particular World Challenge's good character, profound regret and remorse, the recording of a conviction is not necessary in order to achieve the relevant sentencing purposes.

132 Whilst I accept that reputationally, World Challenge may have been damaged by this offending, this might have been the case regardless of whether or not a conviction is imposed. I have had regard to the matters in s 8 of the *Sentencing Act 1991* including the prospect that World Challenge's capacity to enter into arrangements with some schools may be affected, noting also the company's previously good record. However, having regard to the objective gravity of the offending, and the importance of general deterrence, I consider that a conviction should be imposed against both defendants.

133 Finally, section 5(2)(b) of the *Sentencing Act 1991* requires the court to have regard to current sentencing practices. The court was provided with a number of comparable cases. Only limited assistance can be derived from comparing other cases, however I take these into account where it is possible to make comparisons.

### **Sentence**

134 Would the representatives of each company please stand.

135 Kilvington Grammar Ltd, on the charge of failing to ensure persons other than employees were not exposed to risks to their health and safety, will be convicted and fined \$140,000.

136 World Challenge Expeditions Pty Ltd, on the charge of failing to ensure persons other than employees were not exposed to risks to their health and safety, will be convicted and fined \$150,000.

### **S 6AAA**

137 Pursuant to s 6AAA of the *Sentencing Act 1991* (Vic), I indicate that but for the plea of guilty, I would have fined Kilvington Grammar the sum of \$185,000 and World Challenge the sum of \$200,000.

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