

Decision on request for enforceable undertaking St Kentigern Trust Board

Background

The St Kentigern Trust Board ('the Trust Board') is a Charitable Trust, responsible for providing an education pathway for 3 to 18 year olds at four schools (including St Kentigern College), on three campuses, across Auckland.

St Kentigern College presented a production of the musical Sweeney Todd, to the public on 6 April 2016. This production was based on the school edition of Sweeney Todd and was produced and directed by staff at the College, with students as the musicians and actors.

During the production, there was a scene in which two characters were being shaved by Sweeney Todd. After being shaved there was a simulation of these characters having their throats cut. The two actors playing these characters received very serious lacerations to their throats.

The contravention

In relation to this incident, it is alleged that the Trust Board breached the Health and Safety at Work Act 2015 (HSWA) by:

- a) Not implementing a system to adequately identify hazards that could give rise to reasonably foreseeable risks to health and safety arising out of the production.
- b) Not implementing adequate control measures to eliminate or minimise the risks of sustaining injuries from razor blades used in the production, including an adequate system to inspect and track the razor blades.
- c) Not establishing an effective incident and investigation reporting system for incidents arising out of the production.
- d) Not providing adequate training or instructions to students on the use of razor blades necessary to protect them from risks to their health and safety arising out of the production.

Request for an enforceable undertaking

The Trust Board has proposed an enforceable undertaking to WorkSafe New Zealand under section 123 of HSWA in relation to the contravention. I am the decision maker for WorkSafe in relation to that proposal.

To date, I have had regard to information including:

- The final proposed enforceable undertaking from the Trust Board;
- Recommendations of the WorkSafe Review Panel;
- WorkSafe Enforceable Undertaking Policy.

Decision

Having regard to the information provided, my decision is to accept the proposed enforceable undertaking under section 123 of HSWA. My reasons for this are as set out below:

The purpose of an enforceable undertaking is to benefit workers/the workplace, the wider industry or sector, and/or the community. As this proposed enforceable undertaking is presented as an alternative to prosecution, it must also account for the benefits that accrue to the Trust Board of avoiding a conviction, and other potential sentencing outcomes. In my view, the proposed enforceable undertaking meets these purposes, particularly with regard to:

1. The nature of the alleged misconduct and how serious it was

This was a serious contravention by the Trust Board. Whilst the Trust Board had systems in place to manage health and safety at its schools (including St Kentigern College) this system did not adequately manage the risks associated with the production, which resulted in serious injury to two of the students involved. I also consider that the degree of vulnerability of the victims, being young persons who could reasonably have expected the Trust Board to have kept them safe, is an aggravating factor. Against that however, the circumstances which have given rise to this incident are undoubtedly specific and narrow.

2. Submissions from any interested party

The Trust Board has already taken a number of positive steps to make amends following the contravention, including:

- [REDACTED] and
- The provision of counselling to the victims and the broader production members; and
- Maintaining ongoing direct contact with the victims/families.

As a part of the proposed enforceable undertaking, the Trust Board has made a commitment to a restorative justice process with the victims and their families, including the payment of financial amends as an outcome. It has also confirmed its intention to make a public statement taking responsibility for the incident, expressing regret for it and recognising its impact on all three of the victims.

I have considered the views of each of the victims in relation to the proposed enforceable undertaking. The victims are supportive of the proposed enforceable undertaking. They have also expressed a desire not to be involved in a prosecution process, which would have the potential to further traumatise them.

3. The person's conduct in respect of mitigation and remedial action

I have noted above remedial steps that have been taken by the Trust Board already. In addition, the proposed enforceable undertaking contains a commitment to spend a minimum of \$77,500 (in addition to any financial amends agreed to be paid to victims) in relation to:

- Developing safety and health guidance that will be used internally in the school and in the performing arts curriculum;
- Providing that guidance to the wider educational sector via a website and conducting 6 workshops in main centres for other schools;
- Developing and running workshops on overall school governance and effective health and safety in schools, for Principals and Boards of Trustees.

These are positive proposals by the Trust Board. Confirmation has been provided from both the NZ School Trustees Association and the Independent Schools of New Zealand that indicates the benefit which would accrue to the education sector through the provision of the proposed guidance and training.

4. The person's past performance and history of compliance with health and safety legislation

There is no history of non-compliance by the Trust Board in relation to health and safety. In this regard, I consider that the contravention can properly be viewed as an isolated incident.

Conclusion

Taking all matters into account, I am satisfied that the enforceable undertaking proposed by the Trust Board provides a real benefit to workers/the workplace, the wider industry or sector, and the community. In my view, the proposed enforceable undertaking is the most appropriate mechanism by which to address accountability in this matter. It is accepted accordingly.



Brett Murray
General Manager
Operations and Specialist Services

5 April 2017

Date