

STATE OF TASMANIA v AMANDA MAREE McHUGH
COMMENTS ON PASSING SENTENCE

24 JUNE 2021
BRETT J

Ms McHugh, you have pleaded guilty to 16 counts of obtaining a financial advantage by deception contrary to section 134.2(1) of the Commonwealth *Criminal Code*, as well as 2 counts of attempting to commit that crime. The maximum penalty prescribed for each offence is imprisonment for 10 years and/or a fine of \$126,000.

The offences were committed between 30 July 2017 and 14 April 2018. On 18 separate occasions during this period, you made a fraudulent claim for a subsidy payment under the Tasmanian Freight Equalisation scheme. The scheme, which is administered and funded by the Commonwealth government, provides financial assistance to Tasmanian businesses who are required to ship certain goods over Bass Strait. The scheme is intended to obviate the financial and competitive disadvantage suffered by Tasmanian businesses arising from the geographic reality that Tasmania is an island. In doing so, it clearly has consequential benefits for the wider Tasmanian economy and community.

At the time of the offending, you were operating a business concerned with the provision of equestrian services. The claims made by you largely related to the purported shipment of horses, although you also claimed in respect of the shipment of other items, some of which were not eligible for the subsidy. The claims in respect of those items were rejected. On each occasion, the shipments for which fraudulent claim was made had not actually taken place. On some occasions, the claim was completely false and, on other occasions, although there had been a legitimate shipment, you claimed for a greater volume and consequent cost than was actually the case. Under the scheme, payment of the claim depended on the provision of supporting evidence. In each case, you provided this evidence in the form of an invoice purporting to be from the transport company providing the service. However, these invoices were false, and had been forged by you. Over the 16 claims accepted and paid by the scheme, you received an aggregate sum to which you were not entitled of \$76,635.08. The two attempts relate to false claims made by you after the relevant authorities had detected your criminality. These claims were, of course, rejected. You attempted to obtain a further aggregate sum of \$17,137.33 by these two fraudulent attempted claims.

Since detection, you have repaid the sum of \$9,036.08. The balance of \$67,599 is outstanding.

You are 36 years of age. Your prior convictions are limited and do not relate to conduct of this nature. You have two children aged 16 and 10. The younger child suffers from some serious health concerns. You have been in gainful employment and are currently in a stable relationship.

The commission of these offences occurred during a difficult period of your life. You and your then partner, not your current partner, had for some years been conducting a horse breeding business on King Island. The business was not profitable and you and your partner had incurred substantial debt. In late 2016, shortly before you commenced to commit these offences, you suffered personal tragedy with the death of your unborn child. Your relationship with your partner, which had been characterised by family violence and financial misconduct by him over a lengthy period, broke up in acrimonious circumstances. Your emotional condition was poor, and you made at least one attempt on your own life. The result of all of this is that you found yourself having to deal with significant financial, emotional and relationship pressures. One of the pressures to which you were subject at that time was that you still had responsibility for a

significant number of horses. A lack of suitable shipping and cost made it difficult for you to keep them on King Island or to transport them to the mainland for sale. You were desperate to avoid the only other alternative, their destruction. In these circumstances, you turned to crime in an effort to alleviate the financial pressure, and save the horses.

It is put to me that you are now remorseful for your conduct. Some purported evidence of this is that, although you are still in difficult financial circumstances, you have been working and have managed to repay a significant amount of the money taken by you. Your counsel also relies for mitigation on your plea of guilty. You pleaded guilty to some of the charges in the Magistrates Court, but did not plead to the balance until this matter had been prepared for trial. I accept that there is some utilitarian benefit in the plea, but I do not think your plea evidences remorse. I note that you did not voluntarily desist from this conduct, and only stopped once your fraud had been detected. I think you are probably experiencing a combination of some remorse mixed with understandable concern about the predicament in which you have placed yourself and your family. However, you will receive some mitigatory benefit for the utilitarian benefit of the plea and the partial repayment.

I agree with prosecuting counsel that your offending conduct constitutes a serious example of the crimes in question. You perpetrated a planned and relatively sophisticated fraud against public funds. You repeated the conduct on several occasions over a significant period of time, and only stopped because your conduct was detected. The sophistication included the preparation of forged documents. I am still of the view that that involved a sophisticated scheme, despite what I have been told about the relatively simple nature of the forgeries, because you were preparing documents purporting to be from the transport companies involved, and presenting them to a government department knowing that that was the evidence which was necessary to trigger payment of the relevant fraudulent claims. The scheme in question was vulnerable to conduct of this nature. Conduct which undermines the efficacy of the scheme has the potential to threaten the benefits derived from it by businesses and the wider community. The crimes were difficult to detect, although I accept that once authorities had been put on alert, it was never going to be problematic to confirm the fraud. It is well-established by authority, and obvious in any event from these considerations, that general deterrence is the predominant sentencing consideration.

Having said this, I accept that your decision to commit the offences arose within the context of the difficult combination of circumstances in which you found yourself at the time. These circumstances deserve sympathy. However many people suffer difficulties in their life, but they do not turn to crime to solve them. Your response was to engage in blatant and persistent dishonesty. This suggests that, despite your prior good record, personal deterrence does have a role to play in the sentence. Having said that, although this conclusion is not completely unequivocal, I accept that on balance you were motivated by what was at least your perception of your financial need, and not simply pure avarice.

Ultimately, the seriousness and scale of the offending, and the need to emphasise general deterrence, means that the only appropriate sentence is a significant sentence of imprisonment. However, I will take account of your personal circumstances, including your care responsibilities in respect of your children, your plea of guilty and your effort to repay the money taken by you, by fixing an appropriate recognisance release period.

Accordingly, the orders I make are as follows:

- 1 You are convicted of the offences to which you have pleaded guilty.
- 2 I impose a sentence of imprisonment for an aggregate term of 2 years. I direct that you be released after serving eight months of the sentence, upon giving security by recognisance in the sum of \$5,000, conditioned that you be of good behaviour for a period of two years. The sentence will commence from the date that you were remanded in custody which is 8 June 2021.
- 3 In accordance with s 16F of the *Crimes Act*, I explain to you that if you fail to comply with a condition of the recognisance, in particular, if you fail to remain of good behaviour, including by committing an offence such as this during that time, you may be summonsed to appear before the Court and, if a breach has been established, you may be called upon to forfeit the amount of the recognisance, or the order may be revoked and you may then be required to serve the whole or part of the balance of the sentence. Further, powers that the Court has in the case of a breach of a condition of a recognisance is to require you to perform community service, extending the recognisance period, or taking no further action. Finally, I am required to explain to you that the recognisance may, at any time during its currency, be discharged or varied in accordance with the provisions of the s 20AA of the *Crimes Act*.
- 4 I make a reparation order in favour of the Commonwealth pursuant to s 21B of the *Crimes Act* in the sum of \$67,599.