

Ruhua Liu and Shayne Murphy were found guilty by a jury of trafficking in fish contrary to the *Living Marine Resources Management Act 1995*, s 264A. It is for me to make findings of fact for sentence. Facts adverse to the defendants must be established beyond reasonable doubt. At trial, most of the facts were not contentious or follow from the verdict.

Ms Liu and Mr Murphy have been married since 2007. On 14 December 2015 Ms Liu drove to the Toll Transport depot in Launceston with three large polystyrene boxes packed with abalone. She left the boxes for delivery, in accordance with the address written on the boxes and the consignment note she had taken with her, to a named business at a seafood market in Melbourne. In fact, the proprietor of that business knew nothing about the abalone or the consignment. However, a loose arrangement was in place with a nearby store holder at the same seafood market whereby items would, on occasion, be shipped to the first business to be held in cold storage until collection by the other. The staff at Toll Transport, observing the reference to the seafood business on the boxes, and mindful of the strict regulation of the sale and transport of fish, contacted the police. A police officer opened the boxes, and saw that they were full of abalone. It was later established that across the three boxes there were 186 abalone weighing a total of 37.4 kilograms.

A police officer phoned and spoke to Ms Liu later on that day. She admitted that she knew that the boxes contained abalone and that they were destined for the seafood business in Melbourne. Mr Murphy was interviewed by the police on 11 January 2016. He admitted that he had packed the fish and had written the intended delivery address on the boxes. He also accepted that he was party to the transport of the boxes to Toll and to the intended delivery to Melbourne.

Ms Liu was in possession of the abalone on the day she drove them to the Toll depot. Her possession of the abalone was unlawful by operation of the *Fisheries (Abalone) Rules 2009*, r 16. She did not hold any form of licence under the Act or Rules and was not authorised to have possession of more than five abalone without any form of receipt or docket. Therefore, according to the strict provisions of the Act, because she possessed the abalone, transported it to another place and attempted to deliver it to another person, she thereby trafficked in the abalone.

Mr Murphy admitted being in possession of the abalone. He told the police that he believed that the abalone were left over from a Tasmanian seafood business in which he had been a partner from 2011 until it was closed in May 2013. He thought that the abalone had unknowingly come into his possession in boxes packed by others. I do not accept that explanation. I accept the evidence of his partner in that business, corroborated by the evidence of an employee, that the business did not deal with abalone and there were no abalone left over when a stocktake was made. Mr Murphy is to be sentenced on the basis that the source of the abalone, and when and how it came into his possession, cannot be established. I find he knew the fish were in his actual custody prior to the day they were packed. Possession of more than twenty abalone was unlawful under the *Fisheries (Abalone) Rules 2009*, r 16. He had none of the dockets, receipts or licences which may otherwise have authorised possession of abalone in that number. By then packing it and by being party to its transport and proposed delivery he thereby trafficked in it. The abalone had been processed, in terms of shucking, in an amateurish way. They were packaged, some at least by Mr Murphy himself, in a similar manner. Those factors do not suggest high value commercial trafficking but it is also strong evidence that the

fish did not come from a legitimate supplier. Thus, it cannot be said that these fish were lawfully taken in a way which did not improperly deplete the resource. I am satisfied that Mr Murphy also trafficked by sale in that he was sending the abalone in the expectation of some modest but unspecified reward. The total number was not high. The abalone had a deemed value of \$3,394.50, although the actual commercial value was likely less. His conduct did not involve multiple acts over an extended period. However, he, particularly as a person with a background and experience in the seafood industry, should have been aware that possession and shipment of abalone in that quantity in contravention of the regulatory regime was potentially serious and may expose him to heavy penalties. The legislative scheme imposes very strict compliance requirements aimed at enabling the authorities to monitor, manage, protect and preserve a very valuable and vulnerable resource.

Ms Liu is 52 and originally from Southern China. She came to Australia as a student in 1998 and has lived and worked in this country since then. In 2018 she pleaded guilty to two offences involving crayfish committed in 2016. She was fined \$2500 by a magistrate. They are not prior convictions for sentencing purposes. The acts which constituted her trafficking, on the evidence before me, were limited. However, she had some involvement with her husband's seafood business and, like all citizens, she should have been aware of the requirement for regulatory compliance. She will be responsible for the heavy special penalty which the law requires me to impose for offences of this nature. It is calculated by reference to the value of the fish and I have no discretion to reduce or suspend it.

Mr Murphy is now 69. He has no prior convictions which I regard as relevant. His earlier seafood business involvement was without blemish in that respect. He has had an industrious life and served the community as a senator for 12 years until 2005. He will, as well as his wife, be responsible for the special penalty. Even so, it is necessary to emphasise the importance of compliance by a sentence which punishes him and serves as an example to him and others of the consequences of such conduct. Neither defendant is entitled to the mitigation a plea of guilty would have attracted.

Ruhua Liu, you are convicted and fined \$2,000. I order that you pay the special penalty of \$33,945.00. Shayne Murphy, you are convicted and fined \$6,000. I order that you pay the special penalty of \$33,945.00. I may only allow 28 days to pay those sums although you may each apply to enter into a repayment arrangement.