

LEGAL UPDATE – PEANUT ALLERGY AND SAFETY AT SCHOOL & CADET CAMPS

Introduction

Many will recall the 13 year old Victorian Scotch College student, Nathan Francis who died on his first cadet camp in 2007. He was given an army ration pack containing beef satay for lunch, he took one bite. He was unconscious half an hour later and dead that afternoon, despite being given three doses of EpiPen by a camp doctor. There were seven cadets with peanut allergy at the camp. Three were provided with the beef satay, two

cadets survived. A Coronial Inquest was held over ten days in December 2010 in which the role of the school was publicly examined. The findings of that inquest are not yet available.

Comcare v Commonwealth of Australia [2011] FCA 1043 handed down on 31 August 2011 concerns another cadet camp in Queensland where again a known anaphylactic Cadet was given a peanut satay.

This article looks at the role of the Commonwealth in loco parentis and under the Occupational Health and Safety Act (Cth) and provides some practical

guidance on the prevention of further incidents.

Allergy to nuts is on the increase for reasons not yet understood. Both schools and the military need to factor this problem and recognize that EpiPen is not the total answer. Common sense needs to prevail and as a preliminary measure satay needs to be removed from the menu of all school and cadet camps.



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The duties of the Commonwealth ('the Cth') can be found in the *Occupational Health and Safety Act 1991* (Cth) ('the Act'). The overarching responsibility is found in section 16(1), which is that an employer must take all reasonably practical steps to protect the health and safety at work of the employer's employees. The Cth is under an obligation to provide a reasonably safe environment in respect of cadet training. The Cth also stands in the position of *loco parentis* because many of those who serve in the Cadets are minors. In relation to cadets the duty is performed by the Chief of Army.

Comcare v Cth

[2009] FCA 700

In the case concerning Nathan Francis, parents were told in a written notice that boys were not to bring food to the cadet camp. Parents were required to advise the cadet unit in writing about any medical conditions. Nathan's mother, replied in writing that Nathan suffered

severe peanut allergy. It was known to the Army and in the school community generally that if people with peanut allergy ate any peanut they could suffer potentially life threatening consequences.

Notwithstanding this knowledge and Mrs Francis' advice, Nathan was given an Army ration pack which contained a beef satay meal made with peanut. At lunch time on the first day of camp Nathan took a mouthful of the beef satay meal. He was unconscious half an hour later and was pronounced dead on arrival by air ambulance helicopter at the Royal Children's Hospital later that afternoon.

There were seven Cadets with peanut allergy on the same camp. Aside from Nathan, two other known anaphylactic cadets were given peanut satay but survived. In addition, six cadets were lost in the bush for 18 hours without a radio. The person who was supposed to remain with them took the

radio with him, and left the cadets alone. This was held by the Court to be a further breach of the Act.

The Cth was held liable under the Act. However, the OHS Act does not impose responsibility on the school and therefore the Court was not able to examine the school's liability.

However, the Court strongly recommended that the Coroner conduct an investigation so that the role of the school could be publicly examined. The Court said that the finding that the Cth is liable did not mean that other people were not also responsible for his death. His Honour said a question had been raised as to the culpability of staff at Scotch College which required examination.

The Coronial Findings have not yet been handed down but will be of interest for all schools.

Lessons Not Learnt...!

Meanwhile, on 24 September 2009, a further incident occurred at Canungra Training Area in Queensland when a

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Cadet was provided with a 'hot box' containing peanut satay for his consumption despite having been informed that he had an allergy to peanuts. The ingredients were not printed on the box. Fortunately, on this occasion the Cadet did not die, although his reaction was sufficiently serious to require hospitalisation.

The Cth was fined and ordered to pay legal costs. The Court found that because of the death of a cadet in 2007 the military had in place a policy designed to address the very contingency of peanut allergy. The Court found a systemic failure in terms of the translation of that policy into reality on the ground. The Court held that the Cth breached its duty of care and the breach was in a serious category.

The Court said that there was a need to draw attention to the supervisory responsibility for cadets, be they army, navy or airforce, to ensure the translation through the chain of command of individually specific outcomes designed to address individually declared conditions. Particularly, in circumstances where the risk involved is a potentially fatal outcome.

The Court was unimpressed, with the failure of the Cth proffer an apology to the parents of the Cadet.

COMMENT

The Coronial Findings will detail publicly the role of Scotch College in the death of Nathan Francis. A further update will be provided once the Coronial Findings are delivered. In the meantime

schools should review the implementation of existing policies and ensure that these are workable as a matter of practical reality. This ought include training for staff in how to administer the Epipen.

One issue that was not considered by the Court in Nathan's case was the timing at which the adrenalin was provided to the Cadet. In this writer's view it was given too late.

Firstly, as soon as it was noted that a known anaphylactic had ingested satay, (and in this case breathing difficulties ensued) the adrenalin should have been administered immediately.

Secondly, an ambulance should have been called. Anaphylaxis is rapid and unpredictable, and difficult to stabilize even in a hospital setting.



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Once the adrenalin was injected, and the ambulance called, then (and only then unless it can be done simultaneously) the camp GP should have been made to attend upon the Cadet. Not as happened, which was to have the Cadet with breathing difficulties walk to the GPs office, to administer the adrenalin. Valuable time was lost.

If Epipen is given too early, or if it turns out was not necessary, the patient will not be harmed. If, however, the adrenaline is administered too late, the consequences can be very serious, the patient may die or suffer permanent brain damage.

Part of any successful plan

must be to expect failure (or breakdown) in the translation of the policies on the ground, and to implement strategies to counteract that expected failure.

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