

# **Downing Centre District Court to Deliver Justice Over Tragic Hospital Mix-Up**

The families of two babies affected by a fatal gas mix up at a Sydney hospital are still waiting for those responsible to be held accountable.

The sentencing hearing of gas installer Christopher Turner has been adjourned while the Attorney General makes a decision about whether to provide him with indemnity.

## **Criminal proceedings**

It was every parent's nightmare. Two small babies were given nitrous oxide – also known as 'happy gas' – instead of oxygen in a gas mix up at Bankstown-Lidcombe hospital in 2016. The gas is toxic to babies. Newborn John Ghanem died, while Amelia Khan was left with permanent brain damage.

The mix up occurred because nitrous oxide was incorrectly connected to the oxygen outlet in the resuscitation unit of one of the hospital's operating theatres.

It has been a complex case, with a report conducted by the Chief Health Officer finding that a series of errors led to the babies being given the wrong gas, including failings in the installation of the piping, mislabelling, and improper post installation procedures – including that the requirement of an anaesthetist being present when the lines were checked.

Following the catastrophe, an extensive audit of all medical gas outlets installed in NSW Health facilities was conducted.

Installer Christopher Turner pleaded guilty not complying with health and safety duty under the Work Health and Safety Act.

He is being criminally prosecuted by Safework NSW but is also involved in the case Safework NSW is bringing against gas company BOC.

Safework NSW had also originally intended to prosecute the hospital, but dropped charges at the end of last year based on the fact that prior to the incident involving the gas mix up the hospital had a good health and safety record

At the time, instead of prosecution, SafeWorkNSW spokesman opted to ensure the entire South-Western Sydney Local Health District would upgrade its contractor management system, implement a risk information system and create a health and safety literacy program.

Amelia Khans' parents are also filing a civil suit because their young daughter now requires a feeding tube and around-the-clock nursing care.

### **Sentencing adjourned**

[Downing Centre District Court](#) judge David Russell adjourned proceedings the day he was expected to hear evidence from Mr Turner as well as an impact statement from the Khan family after Mr Turner's lawyers asked the NSW Attorney-General for indemnity, so that any evidence given in this matter cannot be used against him during the BOC trial.

As Judge Russell [granted the adjournment](#), he apologised to the families involved acknowledging the delay would cause them further trauma.

The [Sydney District Court in the Downing Centre](#) is considering the sentence to give to the independent contractor who installed the oxygen at the hospital, but until the NSW Attorney-General makes his decision, the sentencing has been put on hold.

### **Indemnity**

The specific situations in which the Attorney General may grant indemnity to a defendant are explained in [section 32 of the Criminal Procedure Act 1986](#) (NSW) which provides that:

- (1) The Attorney General may, if of the opinion that it is appropriate to do so, grant a person an indemnity from prosecution (whether on indictment or summarily)–
  - (a) for a specified offence, or
  - (b) in respect of specified acts or omissions.
- (2) If the Attorney General grants such an indemnity, no proceedings may thereafter be instituted or continued against the person in respect of the offence or the acts or omissions.
- (3) Such an indemnity may be granted conditionally or unconditionally.
- (4) Such an indemnity may not be granted in respect of a summary offence that is not a prescribed summary offence, unless the Attorney General has consulted the Minister administering the enactment or instrument under which the offence is created.