



Judgment Summary

Supreme Court
Australian Capital Territory
Court Of Appeal

Friday, 1 March 2024

May v Commonwealth [2024] ACTSCA 6

Mossop, McWilliam and Wheelahan JJ

The Court of Appeal has dismissed a prosecution appeal against the acquittal of the Commonwealth on charges of failing to comply with a health and safety duty, under s 32 of the *Work Health and Safety Act 2011* (Cth). The Commonwealth was convicted on two charges by the trial magistrate but acquitted on appeal by a single judge of the Supreme Court. The charges arose out of the death of a helicopter pilot who died after falling into a crevasse at a fuel cache site in Antarctica. The prosecution asserted that the Commonwealth failed to take a package of reasonably practicable measures to ensure the safety of the worker. To succeed, the prosecution had to establish that the whole package of measures was reasonably practicable.

The Court of Appeal held that a proposed measure referring to “minimal crevassing” was not reasonably practicable, as the meaning of the term “minimal crevassing” was uncertain. The Court also found that a proposed measure that involved review of satellite data could not be reasonably practicable given the lack of evidence of the Australian Antarctic Division’s capacity to interpret such satellite data. Finally, the Court found that the requirement to repeat the package of measures was not reasonably practicable as it relied on the uncertain concept of a “significant weather event” to trigger its operation. In those circumstances, the appellant failed to demonstrate that the acquittal of the Commonwealth involved error.

The Court also dismissed an appeal against the acquittal of Helicopter Resources Pty Ltd, a company that provided helicopter services to the Commonwealth in Antarctica and which employed the pilot that died. The prosecution asserted that Helicopter Resources was obliged to ensure that the Commonwealth carried out the package of measures. It was agreed between the parties that if the appeal against the Commonwealth was dismissed, the appeal against Helicopter Resources could not succeed. The appeal against the acquittal of Helicopter Resources was therefore dismissed.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court’s judgment.

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