



HIGH COURT OF AUSTRALIA

24 April 2020

COMMONWEALTH OF AUSTRALIA v HELICOPTER RESOURCES PTY LTD & ORS
[2020] HCA 16

Today the High Court unanimously allowed an appeal from a judgment of the Full Court of the Federal Court of Australia concerning the compulsory examination of an employee in a coronial inquest while parallel criminal proceedings against his employer were pending.

The appellant ("the Commonwealth") engaged the first respondent ("Helicopter Resources") to provide helicopter services in the Australian Antarctic Territory. On 12 January 2016, Captain Wood, a pilot employed by Helicopter Resources to provide some of those services, died from hypothermia after falling into a crevasse in the West Ice Shelf. An inquest into the manner and cause of his death was commenced on 19 September 2017 by the Chief Coroner of the Australian Capital Territory pursuant to the *Coroners Act 1997* (ACT), which applies in the Australian Antarctic Territory. On 20 December 2017, the Commonwealth and Helicopter Resources were charged as co-accused with summary offences against the *Work Health and Safety Act 2011* (Cth), which extends to the Australian Antarctic Territory. Two of the charges alleged breaches in relation to Captain Wood and another employee, and one arose directly out of the circumstances giving rise to Captain Wood's death.

At the Commonwealth's request, the Coroner issued a subpoena pursuant to s 43 of the *Coroners Act* for Helicopter Resources' Chief Pilot, Captain Lomas, to attend to give evidence at the inquest. An application by Helicopter Resources to the Federal Court for judicial review of that decision was dismissed at first instance. Allowing an appeal, the Full Court held that compelling Captain Lomas to give evidence in the coronial inquest would infringe the rule that an accused cannot be required to assist the Crown in proving its case, because s 87(1)(b) of the *Evidence Act 2011* (ACT) would make his evidence before the inquest admissible in the criminal proceedings as evidence of an admission by Helicopter Resources itself. Section 87(1)(b) relevantly entails that a representation by an employee of a party relating to a matter within the scope of the employee's employment may be taken as an admission by the party. By grant of special leave, the Commonwealth appealed to the High Court.

Allowing the appeal, the High Court unanimously held that the fact that an employee can be compelled to give evidence that may be treated as an admission against his or her employer does not mean that the employer is compelled in effect to give evidence or otherwise to assist the Crown in proof of its case. By majority, the High Court refused to extend the time for Helicopter Resources to file a notice of contention alleging that compelling Captain Lomas to give evidence at the coronial inquest would constitute a contempt of court by creating a real risk of interference with justice according to law, on the basis that Helicopter Resources had been acquitted of the offences by the time of the hearing of the appeal and thus would suffer no prejudice in any event.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*