looked or excused by officers of the executive government charged with its administration. Importantly, the majority held that '[n]othing said in *Project Blue Sky* diminished the force of the authorities which support this approach.'[10]

Applying this line of authority to the relevant provisions of the Mining Act, the majority held that nothing in the language of the relevant provisions revealed any intention to depart from what the majority termed the 'settled approach' to the construction of such a legislative regime. The majority also observed that compliance with the regime in question served the public interest, including by improving efficiency, by ensuring owners and occupiers of land were not troubled unnecessarily or prematurely, by protecting the rights of objectors by ensuring that objectors have the benefit of the information contained in mineralisation reports when preparing their objections, and by protecting the interests of miners in competition for access to the state's resources.[11]

Accordingly, the majority held that the appeal should be allowed, and relief sought by Forrest granted.

Nettle J delivered a dissenting judgment. His Honour agreed with the majority that the Mining Act required that the respondents' applications for mining leases be accompanied by a mineralisation report at the time of lodgement. However, his Honour did not agree that a delay between the lodgement of an application and the lodgement of a mineralisation report vitiates the minister's power to grant a mining lease in response to the application.[12]

Implications

The decision in *Forrest* clarifies the operation of *Project Blue Sky* in the context of a statutory regime governing the grant of rights to exploit the mineral resources of a state. Specifically, the majority held that nothing in *Project Blue Sky* limits the long line of authority holding that such a statutory regime must be followed and observed, subject to provision to the contrary.

ENDNOTES

1 *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28; 194 CLR 355.
2 Sections 74, 74A and 75 of the *Mining Act 1978* (WA).
3 *Forrest & Forrest Pty Ltd v Wilson* [2017] HCA 30 at [63].
4 *Project Blue Sky* at [91].
5 *Forrest & Forrest* at [62].
6 *Forrest & Forrest* at [63].
7 *Forrest & Forrest* at [63].
8 *Watson's Bay and South Shore Ferry Co Ltd v Whitfield* (1919) 27 CLR 268; *Cudgen Rutile (No 2) Pty Ltd v Chalk* [1975] AC 520 at 533; *Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth* (1977) 139 CLR 54 at 76; *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 63-64; *Wik Peoples v Queensland* (1996) 187 CLR 1 at 173; *Western Australia v Ward* [2002] HCA 28; 213 CLR 1 at [167]-[168]. See also *New South Wales Aboriginal Land Council v Minister Administering Crown Lands Act* [2016] HCA 50; (2016) 91 ALJR 177 at [121].
9 *Forrest & Forrest* at [64].
10 *Forrest & Forrest* at [65].
11 *Forrest & Forrest* at [89].
12 *Forrest & Forrest* at [101].

The sufficiency of evidence to a finding of guilt beyond reasonable doubt

Alexander H Edwards reports on
GAX v The Queen [2017] HCA 25; (2017) 91 ALJR 698.

Overview

The High Court unanimously determined that the evidence as to a historical sexual offence was not capable of supporting the conviction.

Background

The appellant was charged with three counts of indecently dealing with a child, his daughter. He was acquitted on the first two counts, but convicted of the third. The particulars of the third offence were that on the relevant date, the appellant touched the complainant 'on or her near the vagina'.

The evidence relating to the third count came from three sources: the complainant; her sister, DML; and her mother, GJC. The complainant made a statement to police 10 years after the incident. The complainant's evidence in chief as to the events was vague and uncertain but she did say that her father's fingers were 'near my vagina'. The complainant conceded that her memory was unreliable and that this had been a problem for most of her life. GJC said she returned home from picking up dinner to find the appellant in bed with the complainant with the sheets pulled up. GJC said when she pulled back the covers she saw that the complainant's underpants were folded down about an inch. She yelled at the appellant and pulled him out of the bed. She made her statement to police about the incident three weeks before she commenced family law proceedings, seeking orders against the appellant. DML said that she had been out with her mother on the night in question, and had returned to see the appellant in bed with the complainant. DML recalled that the complainant got out of bed crying with her underpants pulled 'right down' and her nightie in disarray. The appellant gave evidence denying any occasion where he had been in bed with the complainant.

Court of Appeal decision

By majority, the Court of Appeal (Atkinson J, Morrison JA agreeing) found that there was a rational basis for the conviction on ground three. Atkinson J reviewed the evidence in support of count three in the course of considering the inconsistent verdicts ground of appeal. Her Honour found that the evidence of DML and GJC relevantly supported the complainant, and that the inconsistencies between those accounts were minor. McMurdo P, in dissent, would have allowed the appeal.

Appeal to the High Court

The first ground of appeal before the High Court was that the reasons given by Atkinson J failed to demonstrate that her Honour had conducted an independent assessment of the evidence. The second ground was that it was not open to the jury to conclude beyond reasonable doubt that the appellant was guilty of the charge in count three.

The sufficiency of the evidence

The High Court accepted that the evidence of the complaint allowed an inference that was capable in law of supporting the particulars of the charge upon which the appellant was convicted.[1] This limited evidence was, however, marked by serious inconsistency with the accounts of DML and GJC,[2] and by recollections that suggested reconstruction.[3] This latter aspect, in particular, could not be excluded beyond a reasonable doubt.[4] The court unanimously (Bell, Gageler, Nettle and Gordon JJ, Edelman J agreeing) upheld the second ground of appeal for those reasons, resulting in an acquittal.[5]

Independent assessment by appellate court

The majority (Bell, Gageler, Nettle and Gordon JJ) found force in the contention that the reasons of Atkinson J did not disclose her Honour's own assessment of the sufficiency and quality of the evidence as to the particularised touching,[6] but noted the controversy in that regard was somewhat arid in light of their view as to the second ground of the appeal.[7]

Justice Edelman, who joined in the reasons of the majority as to ground two,[8] would have rejected the ground relating to the failure of the court below to make an independent assessment of the evidence.[9] His Honour observed that 'Submissions provide context to the reasons given by a court' and that proper determination of the ground may have required reference to the submissions made before the Court of Appeal.[10]

ENDNOTES

1 At [25] and [28].
2 At [28].
3 At [29].
4 At [30].
5 At [32].
6 At [25].
7 At [3].
8 At [33].
9 At [35].
10 At [37] and [40].