



## HIGH COURT OF AUSTRALIA

20 March 2019

OKS v THE STATE OF WESTERN OF AUSTRALIA  
[2019] HCA 10

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Western Australia.

The appellant was charged with four counts of indecently dealing with a child under the age of 13 years contrary to s 320(4) of the *Criminal Code* (WA). The trial took place nearly 20 years after the alleged offences. The central issue at the trial was the credibility and reliability of the complainant's evidence in light of certain inconsistencies in her evidence and admitted or asserted lies told by her. In the course of summing up the case to the jury, the trial judge directed the jury not to follow a process of reasoning to the effect that, just because the complainant was shown to have told a lie or had admitted to telling a lie, all of her evidence was in fact dishonest and could not be relied upon ("the impugned direction"). The appellant was convicted of the first count and acquitted of the second count. The remaining counts had been withdrawn from the jury.

The appellant appealed against his conviction to the Court of Appeal on the basis that the impugned direction was a wrong decision on a question of law. The Court of Appeal unanimously concluded that it was, but held that the appeal should nonetheless be dismissed under s 30(4) of the *Criminal Appeals Act 2004* (WA) because no substantial miscarriage of justice had occurred ("the proviso").

By grant of special leave, the appellant appealed to the High Court. The Court unanimously held that, if the jury accepted or found that the complainant had told lies, it was open to the jury to find that those lies, without more, precluded acceptance of the complainant's evidence of the commission of the offences beyond reasonable doubt. The impugned direction took away that process of reasoning and was apt to lessen the weight which it was otherwise open to the jury to give to the complainant's lies. In those circumstances, the natural limitations on an appellate court proceeding on the record meant that it could not be assumed that the impugned direction had no effect upon the jury's verdict. As a result, the proviso could not be applied. Accordingly, the Court unanimously allowed the appeal, quashed the appellant's conviction and ordered a new trial.

*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.*