



HIGH COURT OF AUSTRALIA

Manager, Public Information

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THE QUEEN v PETER EDWARDS & ANOR

The High Court today decided that a judge of the Supreme Court of Tasmania applied a wrong principle and took account of irrelevant issues when he granted a permanent stay of the trial of two pilots charged with reckless operation of an aircraft. The pilots' trial will now proceed in the Supreme Court of Tasmania.

Captain Peter Edwards and First Officer Stephen Sarunic were the pilots in charge of a Qantas aircraft which arrived at Launceston Airport on 23 October 2001 to collect 70 passengers who had been stranded. The aircraft arrived at about 10.30pm and took off just after 11pm. The control tower was not staffed between 10pm and 6am, and the pilots themselves were responsible for turning on the runway lighting when arriving at and departing from the airport. While there was no issue concerning the runway lights when the plane landed, witnesses provided inconsistent statements about whether the runway lights were on or off when the aircraft taxied along the runway and took off. Electronic records, which could have assisted in determining whether the runway lights had been activated or whether the pilots had attempted to activate the runway lights, were overwritten before attempts were made to retrieve them.

CASA investigated the incident and in April 2002 referred the matter to the Commonwealth DPP. Complaints against the pilots were not sworn until March 2004. The pilots were committed for trial, but the trial had still not commenced by November 2006. In November 2007 their application for a permanent stay of the trial was heard by a judge of the Supreme Court of Tasmania. The High Court held that the primary judge had applied a test of whether, on the material before him, a continuation of the trial *could* constitute an unacceptable injustice or unfairness. The primary judge concluded that the factors of overall delay and lost evidence made it appropriate to grant the stay. The High Court granted the Commonwealth DPP special leave to appeal that decision.

In a unanimous decision the High Court confirmed that in exercising the discretion to grant a permanent stay of proceedings, a court should consider whether, in all the circumstances, the continuation of the proceedings *would* involve unacceptable injustice or unfairness, or whether continuation *would* be so unfairly and unjustifiably oppressive as to constitute an abuse of process.

The Court noted that it is not uncommon for trials to proceed despite the unavailability of relevant evidence and held that the loss of evidence did not prejudice the pilots. It concluded that no feature of the delay or loss of evidence justified the extreme step of permanently staying the proceedings. The Court set aside the order of the Supreme Court of Tasmania and dismissed the pilots' application for a permanent stay.

- *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.*