



HIGH COURT OF AUSTRALIA

11 September 2024

ATTORNEY-GENERAL FOR THE STATE OF TASMANIA v CASIMATY & ANOR
[2024] HCA 31

Today, the High Court unanimously allowed an appeal from a decision of the Full Court of the Supreme Court of Tasmania. The appeal concerned s 16(1) of the *Public Works Committee Act 1914* (Tas) ("the Act"), which stipulates conditions precedent to the commencement of a public work proposed to be undertaken by a Tasmanian Government department or State authority. The conditions precedent are that the public work has been referred to and reported upon by the Parliamentary Standing Committee on Public Works ("the Committee"). The dispositive question in the appeal was whether observance of those conditions precedent is an obligation that is enforceable by a court.

The Tasmanian Government Department of State Growth ("the Department") proposed that a new interchange be constructed at a road junction near Hobart Airport where Holyman Avenue and Cranston Parade meet the Tasman Highway. The proposal was referred to and reported upon by the Committee in 2017. The Department subsequently engaged Hazell Bros Group Pty Ltd ("Hazell Bros") to construct a new interchange at the junction. Mr Casimaty claimed to have an interest in land adjacent to Cranston Parade and by writ and statement of claim filed in the Supreme Court in 2020, commenced proceedings against Hazell Bros. The basis of Mr Casimaty's case was that commencement of the road work contravened s 16(1) of the Act in that the work was different from the proposed road work that had been referred to and reported upon by the Committee.

The Attorney-General for Tasmania was joined as a defendant to the proceeding. Upon being joined, the Attorney-General filed an interlocutory application seeking an order that the statement of claim be struck out or that the proceeding be dismissed, either because the statement of claim failed to disclose a cause of action in that there was "no justiciable issue before the Court", or because adjudication by the Supreme Court of issues of fact raised on the pleadings would "offend the principle that parliamentary proceedings are absolutely privileged". The primary judge was persuaded that for the Supreme Court to adjudicate on the existence and significance of the pleaded differences between the road work that Hazell Bros had been engaged to undertake and the proposed road work that had been referred to and reported upon by the Committee in 2017 would necessarily contravene the privilege of the Tasmanian Parliament. For that reason, the statement of claim was struck out and the proceeding dismissed.

On appeal, a majority of the Full Court allowed the appeal, construing s 16(1) of the Act as creating "a public obligation enforceable under the general law". Differing from the primary judge, the majority found that for the Supreme Court to make the comparison between the road work that Hazell Bros had been engaged to undertake and the proposed road work that had been referred to and reported upon by the Committee in 2017 would not necessarily contravene any privilege of the Tasmanian Parliament.

The High Court held that observance of the conditions precedent to the commencement of a public work stipulated by s 16(1) is not an obligation that is enforceable by a court. Consistent with the Act's purpose to strengthen political accountability in accordance with the conventions of responsible government, the statutory consequence of non-compliance with those conditions precedent is best seen to lie exclusively within the province of that mechanism of political accountability.

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.