



## HIGH COURT OF AUSTRALIA

10 December 2025

WHS v THE KING  
[2025] HCA 51

Today, the High Court unanimously dismissed an appeal from a judgment of the New South Wales Court of Criminal Appeal.

The appellant was convicted on a retrial ("the second trial") of four sexual offences against a child under the age of ten years, MW. Prior to the second trial, the appellant sought to adduce evidence said to be capable of proving that MW displayed sexualised behaviour prior to the alleged offending, and a police interview in which MW described being touched indecently by a different young male. That evidence was said to be capable of explaining how MW, aged nine years old when she first described the alleged offences to the police, could describe in detail the alleged sexual abuse by the appellant.

The principal issue in this Court was whether that evidence was admissible in the second trial, having regard to s 293 (now s 294CB) of the *Criminal Procedure Act 1986* (NSW) ("the CPA"). Section 293(3) of the CPA renders inadmissible any evidence sought to be adduced that disclosed or implied that the complainant had or may have had sexual experience or a lack of sexual experience, or had or may have taken part or not taken part in sexual activity. However, s 293(6) of the CPA when read with s 293(4) permits such evidence to be adduced in cross-examination of the complainant where, amongst other things, it has been "disclosed or implied in the case for the prosecution" that the complainant had or may have had sexual experience or a lack of sexual experience or had or may have taken part in or not taken part in sexual activity. The appellant contended that there was such a disclosure or implication at the second trial, said to arise from the prosecution adducing evidence at the second trial that MW was nine years old when she first described the alleged offences to the police and the failure of the prosecution to adduce evidence of MW's alleged prior "sexual experience" by MW having previously been exposed to sexual activity by a person other than the appellant.

The High Court unanimously held that the exception in s 293(6) was not engaged in this case. The Court held that the "case for the prosecution" embraces the entirety of how a prosecution case is presented, including such steps in the reasoning process suggested by the prosecution towards guilt that may be implicit. However, the Court held that just because the prosecution adduced evidence that the complainant was of such an age that a risk arose of the jury assuming or inferring that the complainant had or may have had a lack of prior sexual experience, or had or may not have taken part in sexual activity, this is not sufficient to engage s 293(6).

Separately, the Court unanimously rejected an argument that a miscarriage of justice resulted from the final address of the Crown Prosecutor. The appellant contended that aspects of the Crown Prosecutor's final address that sought to explain MW's delay in complaining about the appellant's conduct were unfair because the exclusion of evidence under s 293 denied the appellant the opportunity to adduce documents that would have contradicted or undermined the Crown Prosecutor's submission. The Court held that, properly understood, the documents did not contradict, weaken or otherwise bear upon the Crown Prosecutor's submission, and that the evidentiary basis for the complaint of unfairness was not established.

*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.*