



## HIGH COURT OF AUSTRALIA

10 November 2021

THE QUEEN v ROLFE  
[2021] HCA 38

Today, the High Court granted special leave to appeal against a decision of the Full Court of the Supreme Court of the Northern Territory of Australia ("the Full Court") and unanimously allowed the appeal. The appeal concerned a question that had been referred to the Full Court ("Question 3") regarding the interpretation of s 148B of the *Police Administration Act 1978* (NT) ("the Act"), which relevantly provided that a person is "not civilly or criminally liable" for acts done "in good faith" in the actual or purported "exercise of a power or performance of a function" under the Act.

The respondent, a member of the Northern Territory Police Force ("Police Force"), was charged with murder and alternative offences under the *Criminal Code* (NT) in respect of a fatal shooting which occurred after the respondent had been deployed to arrest the deceased. Prior to the respondent's trial, the trial judge referred four questions to the Full Court on the basis of a set of "assumed facts", which were not agreed, and some aspects of which were likely to be disputed at trial. During the Full Court hearing, concerns were raised that Question 3 was hypothetical in nature. To meet those concerns, the parties had suggested reformulating Question 3 as: "Does a 'function' under s 148B of the [Act] include the functions listed in s 5(2) of the [Act]?". Section 5(2) listed the "core functions" of the Police Force, relevantly including "to protect life and property" and "to prevent ... offences". The Full Court reformulated Question 3, but not in the form suggested by the parties. The Full Court found that the protection afforded by s 148B extended to the performance of the functions listed in s 5(2), and answered its reformulated Question 3 to the effect that it would be open to the jury to find that the respondent was acting in the exercise or purported exercise of a power, or the performance or purported performance of a function, under the Act.

The trial was set to commence on 23 August 2021. On 19 August 2021, the Crown applied to the High Court for special leave to appeal from the Full Court's decision in respect of Question 3. On 23 August 2021, the High Court granted a stay of the trial pending the hearing of the application. On 10 September 2021, the application was referred to the Full Court of the High Court for argument as on appeal. The application was heard on 2 November 2021.

The High Court held that the Full Court erred in its reformulation of Question 3 and adopted the parties' suggested reformulation. The High Court answered Question 3 in the negative, holding that the relevant powers and functions to which s 148B applied were those of the common law, which s 25 of the Act conferred, and the power of arrest in s 124 of the Act. The common law and statutory powers are subject to constraints, such as doing only that which is reasonable and necessary. The High Court reasoned that, unlike ss 25 and 124, s 5 identified the principal functions of the Police Force but did not confer any particular power or function on its members. In granting special leave, the High Court also emphasised that, while it was necessary to correct the Full Court's error, it should not be assumed that the High Court would do so in every case given the undesirability of fragmenting the ordinary course of criminal proceedings.

- *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.*