

## ***Hughes v The Queen* [2017] HCA 20 (14 June 2017) – High Court of Australia**

‘Meaning of “significant probative value” – ‘Tendency evidence’

Charges: Sexual offences against underage girls x 11.

Appeal type: Appeal against conviction.

Facts: The defendant was Robert Hughes, the star of the TV show *Hey Dad!* The 11 complainants were friends of his daughters or workers on the set. The prosecution sought to adduce the evidence of each of the 11 complainants to support each of the other counts. The prosecution sought to prove tendencies of ‘having a sexual interest in female children under 16 years of age’ and ‘using his social and familial relationships ... to obtain access to female children under 16 years of age so that he could engage in sexual activities with them’ ([3]). The tendency evidence was admitted, and the appellant was convicted ([8]).

Issues: Whether tendency evidence is required to display features of similarity with the facts in issue before it can be assessed as having “significant probative value”. This issue had been the subject of diverging lines of authority between the Victorian and New South Wales Court of Appeal.

Decision and Reasoning: The High Court (4:3) dismissed the appeal.

The majority (Kiefel CJ, Bell, Keane and Edelman JJ) held that the evidence was admissible. The majority identified that there is likely to be a high degree of probative value when (i) the evidence, by itself or together with other evidence, strongly supports proof of a tendency, and (ii) the tendency strongly supports the proof of a fact that makes up the offence charged ([41]).

The majority endorsed the test for “significant probative value” posed in [Ford](#), that ‘the disputed evidence should make more likely, to a significant extent, the facts that make up the elements of the offence charged ([40]). The majority at [40] added the following qualification:

it is not necessary that the disputed evidence has this effect *by itself*. It is sufficient if the disputed evidence together with other evidence makes significantly more likely any facts making up the elements of the offence charged. Of course, where there are multiple counts on an indictment, it is necessary to consider each count separately to assess whether the tendency evidence which is sought to be adduced in relation to that count is admissible.

Gageler, Nettle and Gordon JJ dissented.

Gageler J advocated for a more conservative approach: his Honour argued that admitting all the evidence risks the jury placing too much emphasis on the series of allegations, and not assessing each charge individually ([109]).

Nettle J emphasised that the fact that an accused has committed one sexual offence against a child is not, without more, sufficiently probative of the accused committing another sexual offence against a child ([158]). Something more is required, for example a similarity in the relationship between the alleged victims, a connection between the details and circumstances of each offence, or a system of offending ([158]). Nettle J also reiterated the dangers in admitting tendency evidence ([174]).

Gordon J agreed with Gageler and Nettle JJ and set out her Honour's own set of principles at [216].