



HIGH COURT OF AUSTRALIA

8 October 2014

TAJJOUR v STATE OF NEW SOUTH WALES
HAWTHORNE v STATE OF NEW SOUTH WALES
FORSTER v STATE OF NEW SOUTH WALES

[2014] HCA 35

Today the High Court by majority upheld the validity of s 93X of the *Crimes Act* 1900 (NSW) which makes it an offence habitually to consort with convicted offenders.

Section 93X provides that any person who habitually consorts with convicted offenders, after having been given an official warning in relation to each of those offenders, is guilty of an offence, punishable by imprisonment, fine, or both. In Australian law, to "habitually consort" is understood to mean to seek or accept association or to keep company with persons of a particular class. Section 93W further provides that, in the relevant provisions of the Act, "consort" means consort in person or by any other means, including by electronic or other form of communication. Section 93Y provides that certain forms of consorting are to be disregarded if the person accused of consorting satisfies the court that the consorting was reasonable in the circumstances.

Three plaintiffs separately charged with an offence against s 93X brought proceedings in the Supreme Court of New South Wales seeking a declaration that s 93X is invalid. Those proceedings were removed into the High Court. Each plaintiff alleged that s 93X is invalid because it impermissibly burdens the freedom of communication concerning government and political matters implied in the Commonwealth Constitution. Two of the plaintiffs further alleged that s 93X is invalid because it infringes a freedom of association which they said should be found to be implied in the Constitution, and because the provision is inconsistent with Australia's obligations under the International Covenant on Civil and Political Rights ("the ICCPR").

By majority the High Court upheld the validity of s 93X. The Court accepted that the provision effectively burdens the implied freedom of communication about government and political matters. But the majority of the Court held that s 93X is not invalid because it is reasonably appropriate and adapted, or proportionate, to serve the legitimate end of the prevention of crime in a manner compatible with the maintenance of the constitutionally prescribed system of representative government.

The High Court unanimously concluded that the provisions of the ICCPR, where not incorporated in Commonwealth legislation, impose no constraint upon the power of a State Parliament to enact contrary legislation. Each member of the High Court who considered it necessary to answer the question about a free-standing freedom of association concluded that no such freedom is to be implied in the Constitution.

- *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.*