



HIGH COURT OF AUSTRALIA

10 April 2019

KATHLEEN CLUBB v ALYCE EDWARDS & ANOR; JOHN GRAHAM PRESTON v
ELIZABETH AVERY & ANOR
[2019] HCA 11

Today the High Court unanimously dismissed so much of two appeals as had been removed from the Supreme Court of Victoria and the Supreme Court of Tasmania. The High Court unanimously rejected the appellants' challenges to two laws which prohibit certain communications and activities in relation to abortions in "access zones" around premises at which abortions are provided.

Section 185D of the *Public Health and Wellbeing Act 2008* (Vic) ("the Victorian Act") relevantly prohibits a person from communicating in relation to abortions in a manner able to be seen or heard by persons accessing or attempting to access premises at which abortions are provided, if the communication is reasonably likely to cause distress or anxiety ("the communication prohibition"). Section 9(2) of the *Reproductive Health (Access to Terminations) Act 2013* (Tas) ("the Tasmanian Act") relevantly prohibits protests in relation to terminations that are able to be seen or heard by a person accessing premises at which terminations are provided ("the protest prohibition"). The communication prohibition and the protest prohibition each apply within a radius of 150 metres from premises at which abortions are provided.

Mrs Clubb was convicted in the Magistrates' Court of Victoria of an offence against s 185D of the Victorian Act. Mr Preston was convicted in the Magistrates Court of Tasmania of an offence against s 9(2) of the Tasmanian Act. The appellants each sought review of their convictions, including on the ground that the provision under which they had been convicted is invalid because it impermissibly burdens the freedom of communication on governmental and political matters which is implied in the *Constitution* ("the implied freedom"). Those parts of the proceedings in each of the Supreme Courts relating to the implied freedom were removed into the High Court.

In relation to the Victorian Act, a majority of the Court considered that the burden imposed by the communication prohibition was justified by reference to its legitimate purposes, including the protection of the safety, wellbeing, privacy and dignity of persons accessing lawful medical services. The other members of the Court considered that the challenge to the communication prohibition should be dismissed without determining the validity of the prohibition because it was not established that Mrs Clubb's conduct involved political communication. In relation to the Tasmanian Act, the Court unanimously held that the burden imposed by the protest prohibition was justified by reference to its legitimate purposes, which include the protection of the safety, wellbeing, privacy and dignity of persons accessing premises at which abortions are provided and ensuring unimpeded access to lawful medical services.

- *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.*