



HIGH COURT OF AUSTRALIA

8 October 2025

CD & ANOR V THE COMMONWEALTH OF AUSTRALIA
CD & ANOR V DIRECTOR OF PUBLIC PROSECUTIONS (SA) & ANOR
[2025] HCA 37

Today, the High Court unanimously answered the questions of law stated for its consideration in the special case to the effect that the *Surveillance Legislation (Confirmation of Application) Act 2024* (Cth) ("the Confirmation of Application Act") is not invalid on either of the asserted grounds.

The plaintiffs, CD and TB, were charged with various offences. The Director of Public Prosecutions (SA) seeks to prove those charges by using electronic communications sent and received using an application known as "ANOM". Without the knowledge or consent of users of the ANOM application, ANOM communications were accessed by the Australian Federal Police ("the AFP") under warrants issued pursuant to the *Surveillance Devices Act 2004* (Cth) and the *Crimes Act 1914* (Cth).

CD and TB filed an interlocutory application in the criminal proceedings seeking, among other things, an order for the exclusion of the ANOM communications as evidence on the ground that the ANOM communications were unlawfully intercepted in contravention of s 7(1) of the *Telecommunications (Interception and Access) Act 1979* (Cth) ("the TIA Act") and were therefore inadmissible under that Act. The trial judge dismissed the application. The trial judge then stated for the consideration of the Court of Appeal of the Supreme Court of South Australia questions of law, including: Did the ANOM application and system involve an interception of a communication passing over a telecommunications system contrary to s 7(1) of the TIA Act? The Court of Appeal answered "No". CD and TB were granted special leave to appeal to the High Court against the decision of the Court of Appeal.

The Confirmation of Application Act was enacted after the grant of special leave to appeal. The Confirmation of Application Act provided that information or a record obtained under specified warrants issued to the AFP was not intercepted while passing over a telecommunications system and was lawfully obtained. By writ of summons filed in the High Court, CD and TB sought a declaration that the Confirmation of Application Act was invalid and the parties agreed a special case, stating questions of law for the opinion of the Full Court. Those questions were: Is the Confirmation of Application Act invalid, either in whole or in part, because: (a) it is an impermissible exercise by the Parliament of the judicial power of the Commonwealth; or (b) it impermissibly interferes with and undermines the institutional integrity of courts vested with federal jurisdiction?

The High Court held that the impugned provisions do not infringe the judicial power of the Commonwealth or impermissibly interfere with the integrity of courts vested with federal jurisdiction. The questions of law stated in the special case were therefore answered unanimously in the negative. It followed that the appeal was moot and the grant of special leave to appeal from the judgment of the Court of Appeal was revoked.

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.