



HIGH COURT OF AUSTRALIA

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XYZ v THE COMMONWEALTH OF AUSTRALIA

Laws prohibiting Australians from engaging in sexual activity with children in other countries were constitutionally valid, the High Court of Australia held today.

A Melbourne man, now 62, known as XYZ, was arrested by the Australian Federal Police in Melbourne in 2002 in relation to offences said to have been committed in Thailand in 2001. He was charged with engaging in sexual intercourse, attempting to engage in sexual intercourse and committing an act of indecency with a child under 16, contrary to sections 50BA and 50BC of the *Crimes Act*. The child was not a citizen or resident of Australia. Before his trial in the Victorian County Court was to due to be heard, XYZ instituted an action in the High Court seeking a declaration that sections 50BA and 50BC are not valid laws of the Commonwealth. At the conclusion of a hearing on 17 November 2005, the Court held that both sections are laws with respect to external affairs, within section 51(xxix) of the Constitution. The Court handed down its written reasons today for the decision by a 5-2 majority. XYZ's trial is now due to start in July.

The Court held that sections 50BA and 50BC, which relate to conduct outside Australia but are limited in operation to the conduct of Australian citizens or residents, were within the legislative competence of the Commonwealth Parliament as being laws for the peace, order and good government of Australia with respect to external affairs.

XYZ had argued that Parliament's power to make laws with respect to external affairs is limited to making laws with respect to relations between Australia and other countries. The Court held that to do this it would have to depart from its 1991 decision in *Polyukhovich v The Commonwealth* which held that the *War Crimes Amendment Act* was a valid law. (Ivan Polyukhovich was charged in 1990 with war crimes committed in Nazi-occupied Ukraine during World War II. He moved to Australia in 1949 and in 1958 became a citizen.) In *Polyukhovich*, the Court held that the external affairs power was not limited to Australia's relations with other countries but includes a power to make laws with respect to places, persons, matters or things outside Australia's geographical limits. This Court declined to depart from the decision in *Polyukhovich* which was now established doctrine on the scope of the external affairs power. The conduct prohibited under sections 50BA and 50BC involved places, persons, matters or things outside Australia so fell within the meaning of "external affairs".

- *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.*