



HIGH COURT OF AUSTRALIA

27 February 2013

MAN HORAN MONIS v THE QUEEN & ANOR

AMIRAH DROUDIS v THE QUEEN & ANOR

[2013] HCA 4

Today the High Court dismissed two appeals from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales, which held that s 471.12 of the *Criminal Code* (Cth) is valid insofar as it makes it a crime to use a postal or similar service in a way that reasonable persons would regard as offensive.

The appellants allegedly sent letters (and in one case a recorded message) to the relatives of Australian soldiers killed in action in Afghanistan and to the mother of an Austrade official killed in Indonesia. The communications criticised Australia's military involvement in Afghanistan. They opened with expressions of sympathy for the grieving relatives but then proceeded to criticise and condemn the deceased person.

Section 471.12 makes it a crime for a person to use a postal or similar service "in a way ... that reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive". One appellant was charged with 12 counts of using a postal service in an offensive way and one count of using a postal service in a harassing way, and the other appellant was charged with eight counts of aiding and abetting in the commission of some of those offences.

In the District Court of New South Wales, the appellants unsuccessfully sought orders quashing the indictment on the basis that s 471.12 was invalid because it was inconsistent with the implied constitutional freedom of political communication. The Court of Criminal Appeal dismissed an appeal to that Court. By special leave, the appellants appealed to the High Court.

The High Court unanimously held that s 471.12 restricted political communication, but divided in assessing the purpose of s 471.12. Three Justices would have dismissed the appeals, holding that the section protects against the misuse of the postal service to deliver seriously offensive material into a person's home or workplace in a manner which is compatible with the system of representative and responsible government established by the Constitution. Three Justices would have allowed the appeals, holding that the end pursued by the section is neither legitimate nor implemented in a manner that is compatible with the constitutional system of government.

Where the High Court is equally divided in opinion, s 23(2)(a) of the *Judiciary Act* 1903 (Cth) provides that the decision appealed from shall be affirmed. Accordingly, the High Court ordered that the appeals be dismissed.

- *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.*