

Clubb v Edwards; Preston v Avery [2019] HCA 11

<https://lawcasesummaries.com/knowledge-base/clubb-v-edwards-preston-v-avery-2019-hca-11/>

Facts

- Section 185D of the *Public Health and Wellbeing Act 2008* (Vic) ("**the Victorian Act**") 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**") prohibits protests in relation to abortions that are able to be seen or heard by a person accessing premises at which abortions are provided ("**the protest prohibition**").
- Both these prohibitions apply to a radius of 150 metres from a premises at which abortions are provided.
- Mrs Clubb was convicted in the Magistrates Court of Victoria under section 185D of the Victorian Act. Mr Preston was convicted in the Magistrates Court of Tasmania under section 9(2) of the Tasmanian Act.
- The appellants appealed their convictions, including on the ground that the provisions under which they had been convicted are invalid because they impermissibly burden the implied freedom of political communication.

Issues

- Did the relevant provisions of the Victorian and Tasmanian Acts infringe on the implied freedom of political communication?

Held

- 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 due to its legitimate purposes. This included 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.

Full Text

The full text is available here:

<http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/11>

Law case summary from www.lawcasesummaries.com