



HIGH COURT OF AUSTRALIA

19 June 2013

JOAN MONICA MALONEY v THE QUEEN

[2013] HCA 28

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland which held that a law restricting possession of alcohol on Palm Island was not invalid by reason of inconsistency with s 10 of the *Racial Discrimination Act 1975* (Cth).

The appellant, an Indigenous resident of Palm Island in Queensland, was convicted in the Magistrates Court in Townsville of the offence of being in possession of more than a prescribed quantity of liquor in a restricted area on Palm Island contrary to s 168B of the *Liquor Act 1992* (Q). Schedule 1R of the Liquor Regulation, made under the Act, has the effect of restricting the nature and quantity of liquor which people may have in their possession in public areas on Palm Island. The Palm Island community is composed almost entirely of Indigenous people.

The appellant's appeal against her conviction to the District Court of Queensland was dismissed. Her application for leave to appeal to the Court of Appeal was also dismissed. By special leave, she appealed to the High Court.

By force of s 10 of the *Racial Discrimination Act*, where a law has the effect that persons of a particular race enjoy a right to a more limited extent than persons of another race, the persons adversely affected shall enjoy that right to the same extent as the persons of that other race. However s 10 does not apply if the law is a "special measure" taken for the sole purpose of securing the adequate advancement of a racial group requiring such protection as may be necessary to ensure that group's equal enjoyment or exercise of human rights and fundamental freedoms.

In the High Court, the appellant argued that s 10 of the *Racial Discrimination Act* applied to the provisions of Sched 1R of the Liquor Regulation because those provisions affected her enjoyment of three rights: the right to equal treatment before courts and tribunals; the right to own property; and the right to access places and services intended for use by the general public. She also argued that Sched 1R was not a "special measure" within the meaning of s 8 of the *Racial Discrimination Act*.

The High Court found, by majority, that the impugned provisions were inconsistent with s 10 of the *Racial Discrimination Act*. However, the Court was unanimously of the view that s 10 did not apply because the provisions constituted a "special measure" designed to protect the residents of Palm Island from the effects of prevalent alcohol abuse and associated violence. Accordingly, the Court held that Sched 1R was valid and dismissed the appeal.

- *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.*