

# The Guardian



## High court rules public servants can be sacked for political social media posts

**Case of Michaela Banerji has implications for 2 million federal, state and local workers**

**Paul Karp**

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The high court has unanimously upheld a decision to sack a public servant, Michaela Banerji, for anonymous social media posts that criticised the government's immigration policy.

The court delivered its judgment in the landmark freedom of speech test case on Wednesday, upholding an appeal from the workers' compensation agency Comcare which argued it was reasonable for the immigration department to sack Banerji.

The case has implications for 2 million federal, state and local public servants, as the court declined to use the constitutional implied freedom of communication to rule that the sacking was unreasonable.

Banerji was sacked for breaching the public service code of conduct - which requires public servants to be apolitical "at all times" - for anonymous tweets from her LaLegale Twitter account.

After an unsuccessful unfair dismissal claim, Banerji won a workers' compensation case when the administrative appeals tribunal found her sacking was unreasonable in part because it

breached the implied freedom.

In the majority judgment the chief justice, Susan Kiefel, and justices Virginia Bell, Patrick Keane and Geoffrey Nettle overturned that decision, noting the implied freedom “is not a personal right of free speech”.

They noted that public service rules that anyone who posts on social media should assume their identity and public employment will be revealed, an “obvious” risk that means even “so-called anonymous tweets” can damage the public service.

In separate judgments justices Stephen Gageler and James Edelman acknowledged the burden imposed by the public sector gag, which Gageler called direct and “substantial” and Edelman described as “deep and broad”.

But both agreed with the majority that the public sector gag was “reasonably necessary and adequately balanced” given the legitimate purpose of ensuring an apolitical public service.

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The Community and Public Sector Union national secretary, Nadine Flood, said the union was “disappointed” in the decision because “people working in commonwealth agencies should be allowed normal rights as citizens rather than facing Orwellian censorship because of where they work”.

Flood said an even more “draconian” version of the policy had been released in 2017 which warned that liking and sharing social media posts could put them in breach of public sector gag rules.

“At the end of the day the government has a responsibility to protect freedom of speech ... with a social media policy that reflects the real world,” she said.

Greg Barns, spokesman for the Australian Lawyers Alliance, said the case “shows that Australians lack fundamental protections such as freedom of speech”.

“The lack of a national human rights charter means government can shut down dissent far too easily,” he said.

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