



## HIGH COURT OF AUSTRALIA

2 December 2020

MINISTER FOR HOME AFFAIRS & ORS v DMA18 AS LITIGATION GUARDIAN FOR  
DLZ18 & ANOR; MINISTER FOR HOME AFFAIRS & ANOR v MARIE THERESA ARTHUR  
AS LITIGATION REPRESENTATIVE FOR BXD18; MINISTER FOR HOME AFFAIRS &  
ANOR v FRX17 AS LITIGATION REPRESENTATIVE FOR FRM17; MINISTER FOR HOME  
AFFAIRS & ANOR v DJA18 AS LITIGATION REPRESENTATIVE FOR DIZ18  
[2020] HCA 43

Today the High Court allowed appeals from four judgments of the Full Court of the Federal Court of Australia concerning the proper construction and application of s 494AB of the *Migration Act 1958* (Cth). The High Court also dismissed cross-appeals in the matters relating to BXD18 and DIZ18.

Section 494AB(1) provides that certain "proceedings against the Commonwealth may not be instituted or continued in any court". Those proceedings, listed in s 494AB(1)(a)-(d), are all described as "proceedings relating to" a particular subject matter. In the case of s 494AB(1)(b), the proceedings are further defined by reference to a time period. Section 494AB(3) provides that nothing in the section is intended to affect the jurisdiction of the High Court under s 75(v) of the *Constitution*.

Each respondent, while in a country designated a regional processing country, instituted proceedings in the Federal Court of Australia alleging, in various ways, that the appellants ("the Commonwealth") breached a duty of care to provide them with adequate medical treatment on Nauru. At least part of the relief sought was to compel the Commonwealth to provide adequate medical treatment. After the proceedings were instituted, each respondent was transferred to Australia for the temporary purpose of receiving medical treatment. In each of the proceedings, the Commonwealth alleged that the Federal Court did not have jurisdiction by reason of s 494AB(1)(a), (ca) or (d). Argument in the Full Court treated s 494AB as defining the Federal Court's jurisdiction by limiting or withdrawing the Federal Court's authority to decide the respondents' claims.

The High Court unanimously held that s 494AB does not take away the jurisdiction of courts to hear and determine proceedings of the kinds described in s 494AB(1). It does not limit the authority of the relevant courts to decide those specific claims but provides the Commonwealth with an available answer to those claims (analogous to a time bar) if they are made in a court other than the High Court. It is a provision which the Commonwealth may plead as a defence where one of the identified subject matters in s 494AB(1) is an issue in the proceeding, when and if that pleading would be consistent with its model litigation obligations. Whether an identified subject matter is raised as an issue in the proceeding will depend on the pleadings viewed in light of the relief claimed or, if there are no pleadings, the application and other documents filed in the proceeding.

The High Court further held that: s 494AB(1)(a) applied to DLZ18's proceedings; s 494AB(1)(d) applied to FRM17's proceedings; and each of s 494AB(1)(a) and (d) applied to BXD18 and DIZ18's proceedings.

*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.*