



HIGH COURT OF AUSTRALIA

12 October 2022

BHP GROUP LIMITED v IMPIOMBATO & ANOR
[2022] HCA 33

Today, the High Court dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The sole issue in the appeal was a question of statutory construction: does Pt IVA of the *Federal Court of Australia Act 1976* (Cth) permit representative proceedings to be brought on behalf of group members who are not resident in Australia?

The appellant, BHP Group Limited ("BHP"), is the respondent in a representative proceeding (also known as a class action) commenced in the Federal Court of Australia under Pt IVA, relating to the failure of the Fundão Dam in Brazil in 2015. The group members in the representative proceeding are persons who, during a specified period before the Dam failure, contracted to acquire an interest in fully paid-up ordinary shares in BHP on the Australian Stock Exchange, BHP Billiton Plc ("BHP Plc") on the London Stock Exchange, and/or BHP Plc on the Johannesburg Stock Exchange, and who are alleged to have suffered loss by reason of BHP's conduct in contravention of the continuous disclosure obligations under the ASX Listing Rules and the *Corporations Act 2001* (Cth). The group members are also alleged to have suffered loss as a result of BHP engaging in misleading or deceptive conduct contrary to the *Australian Securities and Investments Commission Act 2001* (Cth) and the *Corporations Act*. This appeal was heard at an interlocutory stage of the representative proceeding.

Part IVA does not contain any express geographic or territorial restriction on the identity of "persons" who can be group members in a representative proceeding. In this appeal, BHP argued that s 21(1)(b) of the *Acts Interpretation Act 1901* (Cth) and the common law presumption against extraterritoriality apply so that Pt IVA must be interpreted as not permitting the inclusion of group members who are not resident in Australia.

The High Court unanimously rejected this argument, holding that Pt IVA allows the inclusion of all persons as group members in a representative proceeding, irrespective of whether they are Australian residents, who have "claims" of the kind described in s 33C(1) of the *Federal Court of Australia Act* that are within the jurisdiction of the Federal Court. Part IVA is concerned with the powers and procedures of the Federal Court relating to the exercise of jurisdiction vested in it by other Commonwealth laws enacted under s 77(i) of the *Constitution*. The territorial connection of Pt IVA to Australia is direct and specific: it concerns the jurisdiction of the Federal Court of Australia. There is no basis to infer any further territorial limitation into Pt IVA.

- *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.*