



HIGH COURT OF AUSTRALIA

31 August 2016

THE MARITIME UNION OF AUSTRALIA & ANOR v MINISTER FOR IMMIGRATION AND
BORDER PROTECTION & ANOR
[2016] HCA 34

Today the High Court unanimously held that a determination made by the Minister for Immigration and Border Protection ("the Minister") pursuant to s 9A(6) of the *Migration Act* 1958 (Cth) ("the Act") exceeded the limits of the power conferred on the Minister by s 9A(6) and for that reason is invalid. The determination had purported to negate certain visa requirements for non-citizens engaged in the offshore resources industry.

The plaintiffs are associations of employees including persons employed in the offshore resources industry. The offshore resources industry is concerned with the exploration and exploitation of offshore natural resources including greenhouse gas, petroleum and other minerals. Since 1982, provisions of the Act have provided to the effect that the migration zone, and therefore the requirement for a non-citizen to hold a visa, extends to non-citizens working on "Australian resources installations". In 2013, the Act was amended to extend Australia's migration zone to non-citizens participating in or supporting an "offshore resources activity" and to impose specified visa requirements in respect of those persons. The amendments also conferred power on the Minister under s 9A(6) to make a determination excepting an operation or activity from the statutory definition of "offshore resources activity". In 2015, the Minister made a determination excepting from that definition all operations and activities to the extent that they use any vessel or structure that is not an Australian resources installation. The purported effect of the determination was thus to negate the operation of the specified visa requirements in relation to non-citizens engaged in operations and activities to the extent that they use any vessel or structure that is not an Australian resources installation.

The parties stated a special case and questions of law arising for the opinion of the Full Court. The questions of law were directed to whether the determination was beyond power and therefore invalid, and, if so, what relief should flow from that.

The High Court unanimously held that the broad-ranging exception contemplated by the determination exceeded the limited terms of the power conferred on the Minister by s 9A(6) of the Act. The text and context of s 9A(6) imply that its purpose is to provide for limited exceptions for particular activities or operations to which it may be determined from time to time the visa regime should not apply. By entirely negating the extension of the visa regime to non-citizens on vessels and structures that are not Australian resources installations, where those non-citizens are in an area in order to participate in or support an offshore resources activity, the determination purported in effect to repeal the operation of the amending provisions' extension of the visa regime, and thereby to thwart that legislative purpose. Accordingly, the High Court declared the determination is invalid and of no effect.

- *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.*