



HIGH COURT OF AUSTRALIA

6 September 2023

AZC20 v MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND
MULTICULTURAL AFFAIRS & ORS
[2023] HCA 26

Today, the High Court allowed appeals from orders of a full court of the Federal Court of Australia. The dispositive issue was whether the Full Court had jurisdiction when it determined the appeals below – that is, whether there was a "matter" within the meaning of Ch III of the *Constitution*.

The appellant, a citizen of Iran, arrived in Australia by boat in July 2013 and has been in immigration detention ever since. Following the final refusal of his protection visa application in February 2021, the appellant commenced two proceedings in the Federal Court of Australia seeking a number of orders, including relevantly an order to require his removal from Australia to a regional processing country in accordance with the duty in s 198AD(2) of the *Migration Act 1958* (Cth). The primary judge made orders in his favour declaring that s 198AD(2) applied to the appellant, requiring the Secretary of the Department of Home Affairs to perform that duty by removing him as soon as reasonably practicable, and requiring that pending performance of the duty the appellant be detained at the home of one of his supporters. Two weeks later, on the day that the order requiring home detention was to come into effect, the Minister for Home Affairs exercised the discretionary power in s 198AE(1) of the Act to determine that the duty in s 198AD(2) did not apply to the appellant. The respondents then filed notices of appeal in the Full Court against the primary judge's orders.

Before the Full Court, the respondents accepted that, irrespective of the outcome of the appeals and from the time of the s 198AE(1) determination, the primary judge's orders relating to the appellant's removal from Australia and home detention ceased to have effect. The Full Court relevantly held that the s 198AE(1) determination had effectively quelled the controversy between the parties about the primary judge's orders. However, the Full Court proceeded to determine the appeals on the basis that (1) the decision may be relevant to issues in another proceeding commenced by the appellant in the Federal Court and (2) it would be in the interests of the administration of justice because the primary judge's orders and reasoning had been employed in litigation by other individuals in similar circumstances. The Full Court determined the substantive grounds of appeal and allowed the appeals.

The High Court held by majority that this was a course that the Full Court could not and should not have adopted. The Full Court only has jurisdiction where there is a "matter" within the meaning of Ch III of the *Constitution*, which relevantly requires that there be a dispute about rights, duties or liabilities that is sufficient to give rise to a justiciable controversy. This requirement applies in appellate jurisdiction, as well as original jurisdiction. At the time the Full Court determined the appeals, there was no controversy over the primary judge's orders because they had no operative legal effect on the parties' rights, duties or liabilities.

- *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.*