



## HIGH COURT OF AUSTRALIA

3 February 2016

PLAINTIFF M68/2015 v  
MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ORS

[2016] HCA 1

Today the High Court held, by majority, that the plaintiff was not entitled to a declaration that the conduct of the first and second defendants in relation to the plaintiff's past detention at the Nauru Regional Processing Centre ("the Centre") was unlawful. The majority of the Court held that s 198AHA of the *Migration Act 1958* (Cth) ("the Act") authorised the Commonwealth's participation, to the extent that the Commonwealth did participate, in the plaintiff's detention.

The plaintiff is a Bangladeshi national who was an "unauthorised maritime arrival" as defined by s 5AA of the Act upon entering Australia's migration zone. She was detained by officers of the second defendant and taken to Nauru pursuant to s 198AD(2) of the Act. Nauru is a country designated by the first defendant as a "regional processing country" under s 198AB(1) of the Act.

On 3 August 2013, the Commonwealth and Nauru entered into an arrangement relating to persons who have travelled irregularly by sea to Australia and who Australian law authorises to be transferred to Nauru ("the second MOU"). By the second MOU and administrative arrangements entered into in support of the second MOU (including arrangements for the establishment and operation of the Centre) ("the Administrative Arrangements"), Nauru undertook to allow transferees to remain on its territory whilst the transferees' claims to refugee status were processed. The Commonwealth was to bear the costs associated with the second MOU. Since March 2014, the third defendant has been a service provider at the Centre pursuant to a contract with the Commonwealth to provide "garrison and welfare services" ("the Transfield Contract").

Section 198AHA applies if the Commonwealth enters into an arrangement with a person or body in relation to the regional processing functions of a country. Sub-section (2) provides, in summary, that the Commonwealth may take any action, and make payments, in relation to the arrangement or the regional processing functions of the country, or do anything incidental or conducive to taking such actions or making such payments.

The plaintiff brought proceedings in the original jurisdiction of the High Court seeking, amongst other things, a declaration that the Commonwealth's conduct (summarised as the imposition, enforcement or procurement of constraints upon the plaintiff's liberty, including her detention, or the Commonwealth's entry into contracts in connection with those constraints, or the Commonwealth having effective control over those constraints) was unlawful by reason that such conduct was not authorised by any valid law of the Commonwealth.

The Court held, by majority, that the plaintiff was not entitled to the declaration sought. The conduct of the Commonwealth in signing the second MOU with Nauru was authorised by s 61 of the Constitution. The Court further held that the conduct of the Commonwealth in giving effect to the second MOU (including by entry into the Administrative Arrangements and the Transfield Contract) was authorised by s 198AHA of the Act, which is a valid law of the Commonwealth.

- *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.*