



HIGH COURT OF AUSTRALIA

1 November 2023

JONES v COMMONWEALTH OF AUSTRALIA & ORS
[2023] HCA 34

Today, the High Court rejected a challenge to the validity of s 34(2)(b)(ii) of the *Australian Citizenship Act 2007* (Cth) ("the Act"). The Court held that s 34(2)(b)(ii) is supported by s 51(xix) of the *Constitution*, which confers the power to make laws with respect to "naturalization and aliens" on the Commonwealth Parliament, and does not repose in the Minister administering the Act the exclusively judicial function of punishing criminal guilt contrary to Ch III of the *Constitution*.

Section 34(2) of the Act empowers the Minister administering the Act to revoke a person's Australian citizenship in certain circumstances. Section 34(2)(b)(ii), in context, provides that the Minister may revoke a person's Australian citizenship acquired by conferral if the person has, at any time after making their application to become an Australian citizen, been "convicted of a serious offence" within the meaning of s 34(5) and the Minister is satisfied that it would be contrary to the public interest for the person to remain an Australian citizen. Section 34(5) provides that a person has been "convicted of a serious offence" for the purposes of s 34 if the person has been convicted of an offence against an Australian law or a foreign law for which the person has been sentenced to death or to a "serious prison sentence", defined by s 3 to mean a sentence of imprisonment for a period of at least 12 months, and the person committed the offence at any time *before* the person became an Australian citizen.

The plaintiff, Mr Jones, was born in the United Kingdom in 1950. He migrated to Australia with his parents in 1966. In 1988, he applied for and was granted a certificate of Australian citizenship under the now-repealed *Australian Citizenship Act 1948* (Cth). He was at that time, and remains, a British citizen. In 2003, he was convicted in the District Court of Queensland of five counts of indecent dealing and indecent assault committed between 1980 and 2001 and was sentenced to two and a half years' imprisonment for each count. Two of those five counts related to conduct that occurred entirely before he became an Australian citizen in 1988. In 2018, the Minister for Home Affairs, Immigration and Border Protection revoked the plaintiff's Australian citizenship under s 34(2) of the Act. By special case in the original jurisdiction of the High Court, the plaintiff challenged the validity of s 34(2)(b)(ii) of the Act on the grounds that it is not supported by s 51(xix) of the *Constitution* or, alternatively, because it reposes in the Minister the exclusively judicial function of punishing criminal guilt contrary to Ch III of the *Constitution*.

The High Court, by majority, held that s 34(2)(b)(ii) is not invalid in its operation in respect of the plaintiff. It provides for an act or process of denaturalisation which is supported by the "naturalization" limb of s 51(xix) of the *Constitution*, because the condition it imposed on the plaintiff's naturalisation is reasonably capable of being seen as necessary for the protection of the integrity of the naturalisation process. The power it confers on the Minister to denaturalise an Australian citizen is not a power to punish criminal guilt and is not otherwise exclusively judicial. Accordingly, the Commonwealth Parliament's conferral of that power on the Minister rather than a court is not contrary to Ch III of the *Constitution*.

- *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.*