

**THE MARITIME UNION OF AUSTRALIA & ANOR v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR (S136/2015)**

Date application for an order to show cause filed: 9 July 2015

Date special case referred to Full Court: 6 May 2016

The *Migration Act* 1958 (Cth) (“the Act”) applies a certain visa regime to non-citizens who participate in or support “offshore resources activity” as defined in s 9A(5) of the Act. Such activity includes the storage of greenhouse gases in the Australian seabed and the exploration for, and recovery of, undersea petroleum and minerals.

Section 8 of the Act deems to be part of Australia any resources installation attached to the Australian seabed, while s 5 designates such an installation an “Australian resources installation”. By s 9A(1) of the Act, any person who is in a relevant area to participate in or support an offshore resources activity is deemed to be in the “migration zone” of Australia. Any such person who is a non-citizen must hold one of certain types of visa in order to lawfully enter and remain in the migration zone.

On 2 December 2015 the Minister for Immigration and Citizenship (“the Minister”) made Determination IMMI 15/140 (“the Determination”) under s 9A(6) of the Act. Paragraph 2 of the Determination excludes from the definition of “offshore resources activity” any relevantly licensed activity to the extent that it uses a vessel or structure that is not an “Australian resources installation”. The consequence is that non-citizens working on relevant vessels and floating structures are no longer subject to the visa regime, since they are not deemed to be in the migration zone.

The plaintiffs are both trade unions whose members include workers in offshore resources industries. By a further amended application for an order to show cause, they seek a declaration that paragraph 2 of the Determination is invalid. The plaintiffs contend that that provision is invalid on the basis that it is either repugnant to the Act (especially ss 9A and 41(2B)) or it negatives too substantial a part of a legislative scheme that regulates foreign labour in offshore resources industries. That legislative scheme includes the *Offshore Minerals Act* 1994 (Cth) and the *Offshore Petroleum and Greenhouse Gas Storage Act* 2006 (Cth).

The parties filed a special case, which Justice Bell referred for consideration by the Full Court. The special case states the following questions:

1. Is paragraph 2 of Determination IMMI15/140, entered on the Federal Register of Legislative Instruments on 3 December 2015, invalid?
2. If the answer to Question 1 is “Yes”, what relief, if any, should be granted?
3. Who should pay the costs of the Special Case?