



HIGH COURT OF AUSTRALIA

Manager, Public Information

10 March 2010

MUSLIMIN v THE QUEEN [2010] HCA 7

A provision of the *Fisheries Management Act* 1991 (Cth) (the FMA) which prohibits a person having in his or her possession a foreign boat equipped with nets, traps or other equipment for fishing in a place in the Australian Fishing Zone (AFZ) is not a provision in relation to “fishing” as defined in s 4 of the FMA. Thus s 12(2) of the FMA does not apply to extend the operation of the provision to what happens above the Australian continental shelf but outside the AFZ, the High Court held today.

The appellant, Mr Muslimin, was charged with an offence under s 101(2) of the FMA. The indictment alleged that, in April 2008, at a place in the waters above the Australian continental shelf but outside the AFZ, the appellant had in his possession a foreign boat equipped with nets, traps or other equipment for fishing for sedentary organisms. Mr Muslimin was tried and convicted in the Supreme Court of the Northern Territory and a majority of the Court of Criminal Appeal of the Northern Territory dismissed his appeal. The High Court granted the appellant special leave to appeal.

Section 101(1) of the FMA prohibits a person having in his or her possession a foreign boat equipped with nets, traps or other equipment for fishing in a place in the AFZ, except in certain defined circumstances. Section 12(2) of the FMA extends provisions “made in relation to fishing in the AFZ ... to the extent that [they are] capable of doing so” to “fishing for sedentary organisms, in or on any part of the Australian continental shelf not within the AFZ ... as if [the sedentary organisms] were within the AFZ ...”.

The High Court concluded that each of the paragraphs which defined “fishing” in s 4 of the FMA referred to an activity. Thus, provisions made “in relation to fishing” in the AFZ, whose application was extended by s 12(2) of the FMA to the Australian continental shelf, must refer to provisions concerning the activity of fishing. Section 101 was directed not to the activity of fishing, but rather to a state of affairs – having possession or charge of a particular kind of boat, that is, a foreign boat equipped for fishing. The Court held that s 101 was not a provision made *in relation to fishing* and thus its coverage was not extended beyond the AFZ to the Australian continental shelf by the operation of s 12(2). The High Court determined that the original indictment did not disclose any offence and set aside the orders made by the Court of Criminal Appeal. In their place the Court ordered that the appeal to the Court of Criminal Appeal be allowed, the appellant’s conviction be quashed and a verdict of acquittal be entered.

- *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.*