HIGH COURT OF AUSTRALIA

7 August 2019

VICTORIAN BUILDING AUTHORITY v NICKOLAOS ANDRIOTIS
[2019] HCA 22

Today the High Court unanimously dismissed an appeal from the Full Court of the Federal Court of Australia. The High Court held that s 20(2) of the *Mutual Recognition Act 1992* (Cth) ("the MRA") does not provide a local registration authority with a discretionary power to refuse registration under the MRA. It also held that a "good character" requirement in a State Act does not fall within the exception to the "mutual recognition principle" in s 17(2) of the MRA.

The mutual recognition principle set out in s 17(1) is that a person registered in the first State for an occupation is entitled, after notifying the local registration authority of the second State, to be registered in the second State for the equivalent occupation. Section 20(2) provides that the local registration authority "may" grant registration on that ground. Section 17(2) provides for an "exception" to the mutual recognition principle, which is that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State so long as those laws, relevantly, are "not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation".

The respondent was registered in New South Wales as a waterproofer. He falsely stated in his application to the New South Wales local registration authority that he had certain work experience. He then sought registration as a waterproofer in Victoria pursuant to the MRA. The Victorian Building Practitioners Board ("the Board") refused to grant registration on the basis that the respondent's New South Wales application demonstrated dishonesty, and he was therefore not of "good character" as required by s 170(1)(c) of the *Building Act 1993* (Vic), being the Victorian scheme regulating registration. The Administrative Appeals Tribunal affirmed the Board's decision. On the respondent's appeal to the Federal Court, the Victorian Building Authority ("the VBA") (the Board's successor) argued that a local registration authority retains a discretion under s 20(2) to refuse registration and, in any event, the "good character" requirement in s 170(1)(c) of the *Building Act* falls within the exception to the mutual recognition principle in s 17(2) of the MRA. The Full Court rejected both arguments and allowed the appeal.

By grant of special leave, the VBA appealed to the High Court. The Court held that the words "qualification … relating to fitness to carry on the occupation" in s 17(2) have a broader meaning than a qualification of an educational or technical kind, and clearly encompass the subject matter of s 170(1)(c) of the *Building Act*. That construction is consistent with the scheme of the MRA. The mutual recognition principle upon which the MRA is founded accepts that registration for an occupation in a first State is sufficient for recognition in the second State, without any further requirements of the law of the second State being fulfilled. The Court held that the word "may" in s 20(2) of the MRA is empowering, providing a local registration authority with power to grant registration under the MRA on the "ground" referred to in s 20(1), namely registration in the first State. Section 20(2) does not admit of a broader discretion to refuse registration.

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au

- *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.*