

**MINISTER FOR HOME AFFAIRS & ORS v DMA18 AS LITIGATION
GUARDIAN FOR DLZ18 & ANOR (M27/2020)**

**MINISTER FOR HOME AFFAIRS & ANOR v MARIE THERESA ARTHUR AS
LITIGATION REPRESENTATIVE FOR BXD18 (M28/2020)**

**MINISTER FOR HOME AFFAIRS & ANOR v FRX17 AS LITIGATION
REPRESENTATIVE FOR FRM17 (M29/2020)**

**MINISTER FOR HOME AFFAIRS & ANOR v DJA18 AS LITIGATION
REPRESENTATIVE FOR DIZ18 (M30/2020)**

Court appealed from: Full Court of the Federal Court of Australia
[2019] FCAFC 148

Date of judgment: 28 August 2019

Special leave granted: 20 March 2020

The four respondents in these matters, FRM17, DLZ18, BXD18 and DIZ18 commenced proceedings in the Federal Court of Australia as representatives of over fifty proceedings pending in the Federal Court where the effect of s 494AB of the *Migration Act 1958* (Cth) (“the Act”) has been raised. Broadly, section 494AB of the Act prohibits certain legal proceedings against the Commonwealth being instituted or continued in any court by transitory persons (as defined by s 5(1) of the Act). A determination was made under s 20(1A) of the *Federal Court of Australia Act 1976* (Cth) that the Court’s original jurisdiction in respect of the hearing and determination of the questions set out by the parties be exercised by a Full Court.

The two questions for determination were:

1. when the proceeding was commencing in the Federal Court of Australia, was the effect of s 494AB of the Act that it could not be instituted? and
2. is the effect of s 494AB of the Act that the proceeding cannot be continued in the Federal Court?

The parties relied on a statement of agreed facts common to all proceedings, namely the arrangements between Australia and Nauru for the transfer of unauthorised maritime arrivals and for the provision of services to them. With the exception of DIZ18, all respondents were transitory persons who arrived in Nauru from Christmas Island. DIZ18 was born on Nauru to parents held in immigration detention there.

In August 2019 Justices Kenny, Robertson and Griffiths held that the answers to the questions above be “no” in relation to respondents FRM17 and DLZ18; “no” and “yes” in relation to respondent BXD18; and “yes” in relation to respondent DIZ18.

The grounds of appeal in this Court related to various issues arising from the construction of s 494AB of the Act.