HIGH COURT OF AUSTRALIA

6 May 2026

TCXM v MINISTER FOR IMMIGRATION AND CITIZENSHIP & ANOR
[2026] HCA 13

Today, the High Court dismissed an appeal from a judgment of the Federal Court of Australia. The appeal concerned the lawfulness of the Commonwealth of Australia entering into an Interim Third Country Reception Arrangement with the Republic of Nauru ("the Interim Arrangement"), as well as the statutory permissibility and constitutional validity of the proposed removal of the appellant from Australia to Nauru.

Following *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137, the Commonwealth Parliament inserted ss 76AAA and 198AHB into the *Migration Act 1958* (Cth). Those provisions were designed to operate alongside other amendments under which an unlawful non-citizen whose removal from Australia had no real prospect of becoming practicable in the reasonably foreseeable future was to be granted a Bridging R (Class WR) Subclass 070 (Bridging (Removal Pending)) visa ("BVR"). Section 76AAA relevantly provided for the giving of a notice which would culminate in the cessation of a non-citizen's BVR if a foreign country that was a party to a "third country reception arrangement" within the meaning of s 198AHB granted the non-citizen permission to enter and remain in that country.

The appellant is a citizen of Iran who was granted a BVR on 24 November 2023. The Interim Arrangement was expressed to have "enter[ed] into force" on 12 February 2025 and to be a "third country reception arrangement" contemplated by s 198AHB of the *Migration Act*. By its terms, the Government of Nauru committed to grant a person accepted for settlement "an indefinite stay visa to enter and remain in Nauru". On 15 February 2025, the Government of Nauru notified the Department of Home Affairs that it had granted the appellant a long-term stay visa. On the same day, the appellant received notice that s 76AAA of the *Migration Act* applied to him. As a consequence, his BVR ceased and he was returned to immigration detention pending his removal from Australia to Nauru.

The appellant challenged his removal in the Federal Court on the grounds that: (i) the entry into the Interim Arrangement was conditioned on the Commonwealth affording him procedural fairness which had not been provided; and (ii) his removal to Nauru was not authorised by s 198(2B) of the *Migration Act* because it was not "reasonably practicable" to remove him due to the inadequacy of medical services in Nauru to treat his severe asthma. The primary judge found that "the medical services available in Nauru are inadequate to manage [his] condition of severe asthma on an ongoing basis", but dismissed the appellant's application.

After the appellant appealed to the Full Court of the Federal Court of Australia, the Commonwealth Parliament enacted the *Home Affairs Legislation Amendment (2025 Measures No 1) Act 2025* (Cth) ("the 2025 Amendment Act"). Item 10 of Sch 1 relevantly deemed "valid", "for all purposes", arrangements including the Interim Arrangement if those arrangements "would, apart from this item, be wholly or partly invalid only because the rules of natural justice were not observed" in their entry. After the commencement of the 2025 Amendment Act, the appeal pending before the Full Court was removed into the High Court upon the application of the Attorney-General of the Commonwealth.

The High Court unanimously dismissed the appeal. The issue of the lawfulness of the Commonwealth entering into the Interim Arrangement for the purpose of s 198AHB of the *Migration Act* was conclusively resolved by the operation of item 10 of Sch 1 to the 2025 Amendment Act. Further, ss 76AAA and 198(2B) of the *Migration Act* authorised and required the removal of the appellant from Australia to Nauru and, in so operating, would not contravene 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.

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