

## Casenote

# PLAINTIFF M174/2016 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION [2018] HCA 16

Last updated: July 2018

This case note provides an overview of the key facts and issues in the case of *Plaintiff M174/2016 v Minister for Immigration and Border Protection* [2018] HCA 18. This case challenges the legality of the 'Fast Track' review process based on a claim that it is procedurally unfair.

### Facts

The plaintiff in this matter is an Iranian asylum seeker who arrived in Australia by boat in October 2012 and applied for a temporary protection visa.<sup>1</sup> The plaintiff's claim for protection was based on the fact that he had converted to Christianity and would therefore face religious persecution in Iran on the basis of his faith.<sup>2</sup>

To support his application for temporary protection, the plaintiff produced a statutory declaration stating that he had been attending a Baptist church in Melbourne regularly since arriving in Australia.<sup>3</sup> The plaintiff produced a letter of support from the Reverend at the church.<sup>4</sup>

The plaintiff was subsequently interviewed by a delegate of the Minister for Immigration and Border Protection. During this interview, he again stated that he had been attending church regularly since his release from immigration detention in December 2012. However, the delegate then interviewed the Reverend from whom the plaintiff had received a letter of support and in this interview the Reverend stated that the plaintiff had stopped attending the church in 2013 because he moved to a new suburb, that he returned early in 2015 for a few weeks, and that since then he had only attended once in June 2015 where he requested a letter of support in his visa application.<sup>5</sup>

Shortly afterwards, the delegate rendered a decision to deny the plaintiff temporary protection based on

The adverse decision was then referred to the Immigration Assessment Authority ('IAA') for review. For the purposes of this review, the plaintiff submitted a further letter of support from the Reverend as well as letters of support from other members of the church congregation. The IAA had regard to some, but not all, of this information and subsequently affirmed the delegate's decision to refuse the plaintiff temporary protection.<sup>7</sup>

## Key issues

- ◁ Whether the original decision maker failed to comply with s 57(2) of the *Migration Act 1958* (Cth) ('the Act') by not giving the plaintiff particulars of, and inviting comment on, the information provided by the Reverend
- ◁ Whether a failure to comply with s57(2) precludes a 'fast track decision' from review by the IAA
- ◁ Whether the IAA acted unreasonably in failing to get or consider new information under s 473DC

## Summary of the relevant law

The plaintiffs' argument relied on the following provisions of the Act:

- ◁ Section 57(2), which provides that 'relevant information' used by the Minister in making a visa decision must be provided to the applicant, and further that the Minister must ensure that the applicant understands the relevance of the information, and that the Minister must invite the applicant to respond to the information;
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- < [Plaintiff M174/2016 v Minister for Immigration and Border Protection](#), Opinions on High, University of Melbourne
- < Andrew Yulle, ['The latest from the High Court'](#) (June 2018), 45 *Law Society of NSW Journal* 94.

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## Endnotes

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<sup>1</sup> *Plaintiff M174/2016 v Minister for Immigration and Border Protection* [2018] HCA 16 at [54] (Gageler, Keane and Nettle JJ).

<sup>2</sup> *Ibid* at [55].

<sup>3</sup> *Ibid* at [56].

<sup>4</sup> *Ibid* at [55].

<sup>5</sup> *Ibid* at [57].

<sup>6</sup> *Ibid* at [15].

<sup>7</sup> *Ibid* at [18].

<sup>8</sup> *Ibid* at [25].

<sup>9</sup> *Ibid* at [26].

<sup>10</sup> *Ibid* at [27].

<sup>11</sup> First defendant's submissions, *Plaintiff M174/2016 v Minister for Immigration and Border Protection* at [22].

<sup>12</sup> *Plaintiff M174/2016 v Minister for Immigration and Border Protection* [2018] HCA 16 (Gageler, Keane and Nettle JJ) at [35].

<sup>13</sup> *Ibid* at [55].

<sup>14</sup> *Ibid* at [72].

<sup>15</sup> *Ibid* at [72].

<sup>16</sup> *Ibid* at [51].

<sup>17</sup> *Ibid* at [17].

<sup>18</sup> *Ibid* at [70].

<sup>19</sup> *Ibid* at [34].

<sup>20</sup> *Ibid* (Gordon J) at [89].