



## HIGH COURT OF AUSTRALIA

9 October 2019

BVD17 v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR  
[2019] HCA 34

Today the High Court unanimously dismissed an appeal from a decision of the Full Court of the Federal Court of Australia concerning the procedural fairness obligations of the Immigration Assessment Authority ("the Authority") in a review under Pt 7AA of the *Migration Act 1958* (Cth) following a notification to the Authority under s 473GB(2)(a) of the *Migration Act*.

Part 7AA of the *Migration Act* establishes a scheme for the ministerial referral of decisions refusing protection visas to certain applicants to the Authority for review. Within Pt 7AA, s 473GB relevantly applies to a document or information given to the Minister for Immigration and Border Protection ("the Minister") or an officer of the Department of Immigration and Border Protection ("the Department") in confidence. Where s 473GB applies to a document or information given by the Secretary of the Department to the Authority, s 473GB(2)(a) obliges the Secretary to notify the Authority in writing that s 473GB applies in relation to the document or information. The Authority may then, under s 473GB(3), have regard to any matter contained in the document or to the information and may, in certain circumstances, disclose any matter contained in the document, or the information, to the referred applicant. Section 473DA(1) provides that Div 3 of Pt 7AA, together with ss 473GA and 473GB, "is taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to reviews conducted by the [Authority]".

The appellant arrived in Australia as an unauthorised maritime arrival in October 2012 and applied for a protection visa. The Minister referred a decision by his delegate to refuse the application to the Authority for review. The Authority affirmed the delegate's decision. The Authority found that the appellant had fabricated his claim to have been of interest to authorities in Sri Lanka. In so finding, the Authority placed weight on the absence of corroboration of one of the appellant's claims in a departmental file relating to an application for a protection visa made by a member of the appellant's family. The file had been before the delegate at the time of making the decision to refuse the appellant's protection visa but had not been relied on adversely by the delegate. The file had then been included in the review material given to the Authority by the Secretary. It was accompanied by a notification under s 473GB(2)(a) that s 473GB applied to the documents and information in the file. The Authority did not disclose any of the documents or information in the file to the appellant and did not disclose to the appellant the fact of the notification.

In *Minister for Immigration and Border Protection v SZMTA* (2019) 93 ALJR 252; 363 ALR 599; [2019] HCA 3, the High Court accepted that the giving of a notification under s 438(2)(a) of the *Migration Act* triggers an obligation of procedural fairness on the part of the Administrative Appeals Tribunal to disclose the fact of notification to an applicant for review under Pt 7. By majority, the High Court found today that s 473DA of the *Migration Act* precludes an equivalent procedural fairness obligation on the part of the Authority to disclose to a referred applicant in a review under Pt 7AA the fact of notification under s 473GB(2)(a). The High Court unanimously found there was insufficient evidence to infer that the Authority failed to consider exercising the discretion conferred by s 473GB(3)(b).

- *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.*