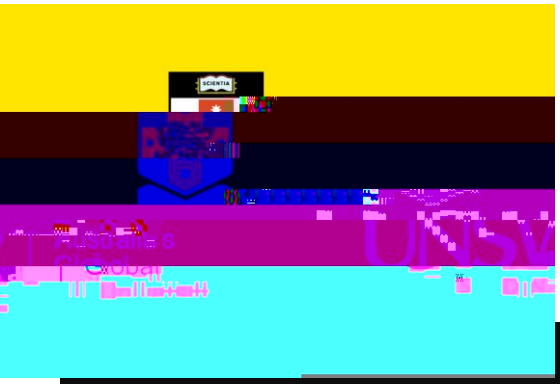

Andrew & Renata Kaldor Centre
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Casenote

MINISTER FOR IMMIGRATION AND BORDER PROTECTION v SZSSJ MINISTER FOR IMMIGRATION AND BORDER PROTECTION v SZTZI [2016] HCA 29

Last updated: May 2017

This case note provides an overview of the key facts and findings of the High Court of Australia in *Minister for Immigration and Border Protection v SZSSJ; Minister for Immigration and Border Protection v SZTZI* [2016] HCA 29.

Facts

The Data Breach

On 10 February 2014, the Department of Immigration and Border Protection ('the Department') published statistics on its website which included embedded information disclosing the identities of 9,258 applicants for protection visas who were then held in immigration detention. The disclosed personal information was protected from unauthorised access and disclosure under Pt 4A of the *Migration Act* 1958 (Cth). It remained on the website for two weeks, and was accessed 123 times in this period ([3]-[5]). This incident came to be known as 'the Data Breach'.

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Should an ITOA find that the *non-refoulement* obligation had been breached, the applicant's case could be referred to the Minister for assessment. Under ss 195A and 417 of the *Migration Act*, the Minister has power to grant a visa if it is in the public interest to do so. Under s 48B, the Minister has the power to remove a statutory bar to making a visa application if it is in the public interest to do so. Exercise of powers under these sections is

Thirdly, it was concluded that procedural fairness had not been afforded to SZSSJ and SZTZI in the ITOA process

Whether procedural fairness had been afforded

The High Court found that procedural fairness had been afforded. First, it held that courts reviewing decisions in regards to jurisdictional error have 'no jurisdiction simply to cure administrative injustice or error', and can only assert and apply the law governing the exercise of administrative power ([81]).

Secondly, the High Court held that procedural fairness requires a procedure which is reasonable in the circumstances to grant a person the chance to put forward his or her case. It held that ordinarily there is no requirement that an individual be notified of information available to a repository which they have chosen not to take into account when making a decision ([82]).

The High Court expressed that while the circumstances of the Data