

## Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) 244 CLR 144 ("The Malaysian Solutions Case")

<https://lawcasesummaries.com/knowledge-base/plaintiff-m70-2011-v-minister-for-immigration-and-citizenship-2011-244-clr-144-the-malaysian-solutions-case/>

### Facts

- The plaintiffs were Afghani citizens who had arrived at Christmas Island (an Australian territory) by way of a boat from Indonesia. They had arrived on 4 August 2011.
- One of the plaintiffs was under 18 years of age.
- The plaintiffs claimed refugee status due to a "*well-founded*" fear that they would be persecuted if they returned to Afghanistan. This was because they were Shi'a Muslims and were at risk of persecution by the Taliban.
- The plaintiffs fell within the meaning of "*unlawful non-citizens*" under the *Migration Act 1958* (Cth) ("**the Migration Act**").
- The plaintiffs were subject to the "Malaysian Solution" - a Commonwealth scheme where 800 refugees were to be transported to Malaysia without prior assessment of their claims.
- The Migration Act requires that refugees' claims for asylum are to be assessed under the "Convention Relating to the Status of Refugees" ("**the Refugee Convention**") or its protocol.
- Malaysia was not a signatory to the Refugee Convention.

### Issues

- Was the Government legally able to remove the plaintiffs and transfer them as refugees to Malaysia under the Migration Act?

### Held

- The High Court found that Malaysia was not legally bound to protect the asylum seekers under the Migration Act. The policy was therefore held to be invalid.
- The High Court held that the Minister for Immigration and Citizenship cannot validly deport asylum seekers to a third country unless that country is legally bound by international law or its own domestic law to:
  - provide access for asylum seekers to effective procedures for applying for protection;
  - provide protection for asylum seekers pending determination of their refugee status;
  - provide protection for persons given refugee status pending their voluntary return to their country of origin or their resettlement in another country; and
  - meet certain international human rights standards in providing that protection.
- The Court also decided that an unaccompanied asylum seeker who is under 18 years of age may not lawfully be taken from Australia without the Minister's written consent.

## **Full Text**

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2011/32.html>

---

Law case summary from [www.lawcasesummaries.com](http://www.lawcasesummaries.com)