The Kosovar and Timorese 'SAFE HAVEN' REFUGEES

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A test case for democratic rights.

When 4000 Kosovar Albanian refugees from the NATO bombing of Yugoslavia began arriving in Australia in early May 1999, Prime Minister John Howard and Immigration and Multicultural Affairs Minister Philip Ruddock received much media coverage as they welcomed the first planeload touching down at Sydney airport. Not so publicised, however, was the legislation that had been quickly pushed through the Senate on 30 April 1999 and the House of Representatives on 11 May 1999 to prevent the war's victims from gaining any legal right to remain in Australia.

Under the *Migration Legislation Amendment (Temporary Safe Haven Visas) Act 1999* (Cth) (the *Temporary Safe Haven Act*), the Kosovar refugees were afforded a new type of temporary entry visa. The Act did not specify how long these visas were to last. Instead it stated that they could be extended, shortened or cancelled by the Minister for Immigration and Multicultural Affairs, with no appeal and no right of review by a tribunal, court or other body. The refugees had no right to apply for refugee status under the UN Convention or any other type of visa — any such application was 'not valid'. These provisions are examined in detail later in this article.

The legislation created a new Subdivision AJ of the *Migration Act 1958* (Cth). Taken as a whole, the *Temporary Safe Haven Act* introduced into the *Migration Act* far-reaching provisions to extinguish the legal and democratic rights of unwanted asylum-seekers. Notably, the Act was passed unanimously with the support of the Labor Party, the Australian Democrats and the Greens, as well as Senators Brian Harradine and Mal Coulston.

On 14 September 1999 Mr Ruddock announced that the *Temporary Safe Haven Act's* provisions would be extended to the 1450 East Timorese people evacuated that day from the United Nations compound in Dili, and to the 350 locally engaged UNAMET staff airlifted from the compound the previous week.[1] Again, the Minister and the media presented the decision as a magnanimous and humanitarian offer of safe haven. Once more, no mention was made of the *Temporary Safe Haven Act's* contents. And nothing was said of the government's refusal to take any more East Timorese refugees, despite the calamity so close to Australia's shores. Indeed, several days earlier, on 9 September, the Minister had announced that any East Timorese people fleeing the militia violence and seeking refuge in Australia by boat or any other independent means would be detained. 'If people arrive here unlawfully there is a legal obligation to detain them', he stated.[2]

Despite the *Temporary Safe Haven Act's* stated intention to block the refugees from applying for other visas, legal challenges — possibly involving test cases before the High Court — may arise.

One scenario would be the Howard government using the legislation to force Kosovar families to return. According to media reports, half the remaining 1000 refugees have indicated a desire to stay in Australia.

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The Prime Minister has intimated that some may be permitted to remain — but only on a case-by-case basis, a limited provision for which does exist in the *Temporary Safe Haven Act.*

Perhaps in an attempt to forestall any judicial challenge to the *Temporary Safe Haven Act* — and to avoid the political difficulties that the government might face in deporting Kosovar refugees against their will — Mr Ruddock announced on 24 August 1999 that those Kosovars who left Australia by 30 October 1999 would receive a 'Winter Reconstruction Allowance'. The payment would be $3000 for each adult and $500 for each child under 18 years of age. The Minister stated that the allowance had been offered generously in response to a request from the United Nations High Commissioner for Refugees (UNHCR) and would 'ensure that the Kosovars have a capacity to re-establish their lives at home before the European winter sets in'.

But, as the Minister subsequently reiterated, those who fail to meet the 30 October deadline will get nothing, and they will face detention and removal.[3] On 18 October 1999, the Minister told the House of Representatives that he would extend the deadline to 30 November but 'if people remain in Australia after their visas have expired, there is an obligation upon my department to detain them and to remove them from Australia.'

In an even more contentious decision, the government is attempting to compel the East Timorese refugees to leave well before the conditions created by weeks of militia violence — killings, house-burning, torture, rape and forced removal — have improved a great deal.

The Howard government has already declined to provide safe haven to an estimated 2000 Timorese students in danger in Indonesia, with the government arguing that it was safe for the students to return to Dili, despite protests to the contrary by the National Council of Timor Resistance (CNRT).[4]

The government is also seeking the removal of some 1600 East Timorese people who have sought refuge in Australia over the past decade, mostly after the November 1991 Dili massacre. It recently abandoned its appeal against the Federal Court ruling in *Lay Kon Tji v Minister for Immigration and Ethnic Affairs* (1998) 1380 FCA, effectively requiring the asylum seekers to resume the process of applying for refugee status, under conditions in which the government will argue that they can safely return to East Timor.[5] In that case, Finkelstein J set aside a Refugee Review Tribunal decision that the Minister's delegate had correctly denied refugee status to the applicant under the Convention relating to the Status of Refugees (1951), as amended by the Protocol relating to the Status of Refugees (1967).

In the hearing before Finkelstein J the government defended its deportation decision on the grounds that the applicant could seek asylum — halfway around the world — in Portugal, the former colonial ruler that is still regarded by the United Nations as the sovereign power in East Timor. This remained the government's contention despite the fact that Australia is the only Western state to recognise the Indonesian annexation of the half-island. Finkelstein J, however, found that, as a matter of law and policy, the Portuguese government did not automatically regard East Timoreans as Portuguese nationals and therefore was unlikely to afford them protection if they were deported to Portugal.[6]

Regardless of whether the *Temporary Safe Haven Act* is enforced, it raises issues that go beyond the distressing plight of the Kosovars and East Timorese. The legislation is part of continuing efforts by successive Commonwealth governments — both Coalition and Labor — to withdraw and restrict, if not to abolish, access to judicial review by those people classified as 'unlawful non-citizens'.

The legal climate

The Howard government is proceeding with the *Migration Legislation Amendment (Judicial Review) Bill 1998* (Cth), which seeks to use comprehensive privative clauses to extinguish the right of immigration and refugee applicants to seek judicial review of most decisions made under the *Migration Act.*[7] In the Minister's view, judicial review will be restricted to reviewing cases involving 'narrow jurisdictional error and malafides'.[8]

In addition, the *Migration Legislation Amendment Bill (No 2) 1998* (Cth) would effectively ensure that neither the Minister nor his department have any obligation to provide immigration detainees with visa application forms or information on the right to apply for refugee status, unless a detainee makes a request in quite specific terms. Moreover, where a detainee has not made a formal written complaint to the Human Rights and Equal Opportunity Commission or the Commonwealth Ombudsman, or asked for a lawyer, the Bill would effectively remove the rights of the detainee to receive communications from these groups.[9]

In several 1999 decisions, the High Court has upheld previous restrictive legislation, sometimes overruling attempts by Federal Court judges to preserve avenues of judicial review.

Notably, in *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) HCA 21, the High Court rejected Federal Court findings that s.420(2)(b) of the *Migration Act* gave rise to rights to 'substantial justice' and fair procedures. That section requires decisions to be made 'according to the substantial justice and merits of the case'. The case involved the Labor government's 1994 amendments to ss.476 and 485 of the *Migration Act* to abolish appeals from the Refugee Review Tribunal to the Federal Court on the grounds of natural justice, unreasonableness, irrelevant considerations and bad faith.

In another crucial case, *Abebe v The Commonwealth* (1999) HCA 14, the High Court upheld the Constitutional validity of the 1994 amendments, rejecting the argument that by reducing the Federal Court's jurisdiction the Labor government had infringed upon the judicial power.

However, in both *Abebe* and *Eshetu*, the High Court affirmed the proposition that no law of the Parliament can limit or abolish the High Court's own jurisdiction under s.75(v) of the Constitution in all matters 'in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth'.[10] In *Abebe*, Gleeson CJ and McHugh J, for example, insisted that: 'Once a question arises as to whether a Commonwealth officer has acted lawfully or within or outside the jurisdiction conferred upon him or her, no law of the Parliament can curtail the jurisdiction of this Court to decide the issue, a jurisdiction which the Constitution has conferred on this Court to protect the people of the Commonwealth and the individual States from excesses of Commonwealth power' (at 58).

Because of the technicalities surrounding the prerogative writs of Mandamus and Prohibition, some authority suggests that the High Court's capacity to afford relief under s.75(v) of the Constitution is limited to cases where a Commonwealth

officer has (a) made a purported exercise of power on a *mala fides* basis, (b) gone beyond the subject matter of the legislation, or (c) made a purported decision, which on its face, goes beyond power, that is, narrow jurisdictional error.[11] But the power to grant injunctions, a form of equitable relief, under s.75(v) may provide wider scope for relief.[12]

Parliament may, of course, effectively protect Ministerial decisions and the conduct of Commonwealth officers from High Court review by making lawful actions that would otherwise have been unlawful under the common law or other legislation. Moreover, the High Court in *Eshetu* gave a traditionally narrow interpretation of the common law doctrine of 'unreasonableness,' declining to overturn a Tribunal decision to deport an Ethiopian student leader, despite his fear of persecution on return.[13]

The *Temporary Safe Haven Act* purports to both extend the 1994 ouster of Federal Court jurisdiction to decisions made under its provisions and also shield those decisions from High Court review by removing all conceivable grounds of review for abuse of power or denial of procedural fairness. Hence, any decision by the High Court under the Act could have wide implications for immigration and refugee law. Among other things, it may provide a useful indication as to the likelihood of any successful challenge against the *Migration Legislation Amendment (Judicial Review) Bill 1998* (Cth) and the *Migration Legislation Amendment Bill (No 2) 1998* (Cth).

How the refugees have been treated

Before examining the *Temporary Safe Haven Act* in detail, it is worth considering the circumstances in which the Kosovars and the Timorese were airlifted to Australia.

The NATO bombing of Yugoslavia from 24 March 1999 triggered a mass exodus from Kosovo, but the Howard government initially ruled out taking any refugees. 'Flying planeloads of refugees into Australia would not be an appropriate response', Mr Ruddock stated on 4 April 1999. Nor would there be any increase in the refugee and humanitarian intake in 1999. It would remain at 12,000, with 4500 places potentially set aside for refugees from earlier conflicts in the former Yugoslavia, including Croatia, Bosnia and Serbia.

This stance was dramatically reversed when Cabinet met on 6 April 1999. Formally, a decision was made to admit 4000 refugees in response to a request from the UN High Commissioner for Refugees (UNHCR). In real terms, the announcement came after the United States, the leading power in the NATO operation, unveiled plans to place Kosovar refugees at the US naval base on Cuba and urged its NATO partners to make similar provisions. Just four days later, the Howard government made another about-face. Its offer to take 4000 people was put on hold when NATO's European members objected to the US-inspired airlift scheme, ostensibly on the grounds that the relief plan would strengthen the hand of the Milosevic government in Yugoslavia. Finally, three weeks later, on 1 May, the Australian government re-activated its offer, following an overnight request from the UNHCR.[14]

The Howard government's reluctant decision to accept Kosovar refugees also followed widespread criticism at home, accompanied by expressions of concern in the media about the apparent callousness of the original stance. To many observers, there had been an obvious contradiction in the official position. The government had declared its support for the NATO bombardment, echoing the NATO position that this was a war for genuinely humanitarian purposes. Yet it would not provide safe haven for a single victim of the war.

In announcing the admission of the Kosovars on 6 April 1999, the Prime Minister said an affluent country such as Australia needed to be seen to be generous. But he set two conditions. The first was that none of the refugees would be permitted to apply for permanent residency, or for social security benefits. The second condition was that the parliamentary opposition parties had to agree to the passage of retrospective legislation to formalise those restrictions once parliament resumed. Both the Labor Party and the Australian Democrats accepted his stipulations. (David Oldfield, the New South Wales parliamentary leader of the Pauline Hanson One Nation party issued a statement claiming credit for the strictly temporary nature of the visas to be offered to the Kosovars. He said the restrictions were a 'direct application' of One Nation's immigration policy.)[15]

The sites chosen for the refugees — disused and semi-used military barracks, usually in remote locations — seemed to be motivated by a desire to discourage the Kosovars from seeking to remain in Australia. Sending traumatised victims of war to military bases provoked criticism from the Ethnic Communities Council of New South Wales and the Australian-Albanian Association. The first base selected was at Brighton, a spartan site some 30 kilometres north of Hobart. Its old dormitory-style huts offered only rudimentary shelter from the winter weather and were far removed from the ethnic Albanian communities in Melbourne and Sydney. Other sites included Department of Defence bases at Puckapunyal, Bandiana and Portsea in Victoria, Hampstead in South Australia and Leeuwin in Western Australia.

The poor conditions at one site — the Singleton military base, 230 kilometres north-west of Sydney — led three busloads of refugees to refuse to disembark on 14 June 1999. They objected to the lack of bathroom and toilet facilities in their wooden huts, inadequate heating and protection from mid-winter winds and the absence of privacy for family groups. Subsequent newspaper reports confirmed that communal bathroom and toilet blocks were up to half a kilometre from the huts. There were no baths for children and no toilets, just portable 'Superloos'. Hot water pipes, light bulbs and electrical cables were dangerously exposed. Dormitories had cold, discoloured, torn linoleum floors, and bare steel beds, tables and lockers. Families were separated by temporary partitions, with no double beds, and no water flowed from the taps in the huts. The UNHCR representative Lyndall Sachs described the conditions as 'inappropriate', noting: 'Having a toilet 500 metres away, particularly if there are young girls or young kids, having to take the kids to the toilets at night would be a very frightening experience for anyone, be they grown-up or a child'.[16]

Despite many requests from members of the public, the government discouraged billeting in people's homes. It emphasised that the provision by the government and charities of clothes, meals, health care, counselling and schooling was confined to the barracks. 'The cost of providing such services for a Kosovar family could be a heavy responsibility for an Australian family to bear over a period of time,' the Department of Immigration and Multicultural Affairs stated.[17] Another difficulty faced

refugees seeking to leave the camps independently. Each adult received only $20 a week for living expenses, plus $5 a child (increased to $27 and $10 respectively on 1 June 1999). When a reporter from the *Australian* newspaper helped one Kosovar family leave the Singleton base, Mr Ruddock issued a statement accusing the journalist of putting 'seriously at risk our ability to manage further arrivals of Kosovars'. On 30 June, the Minister announced that the refugees could work for up to 20 hours a week, but would then lose their allowances.

Similar circumstances surrounded the arrival and treatment of the East Timorese refugees. Initially, the government allowed entry only to the 350 locally engaged UNAMET staff and their immediate families, requiring many of them to make difficult decisions to leave other relatives and fellow Timorese trapped in the besieged UN compound. The ultimate decision to evacuate all those sheltering in the compound came after several days of conflict within the UN mission itself over the UN's decision to pull out of Dili. According to media reports, some UN staff refused to be evacuated unless the refugees were also airlifted to safety.

When the Minister announced on 14 September 1999 the decision to admit all those who had been in the compound, he also stated that, while the UNAMET staff would be permitted to remain in Darwin, the other evacuees would be transferred 'as soon as possible' to the military barracks at Puckapunyal and Leeuwin. The 426 Kosovars remaining in those facilities would be relocated to other bases in Victoria and Tasmania. He said the Timorese would receive the same small cash allowances as the Kosovars. They would be free to leave the 'safe havens' but would receive none of the basic services offered by the government if they did so.

The Temporary Safe Haven Act 1999

The same outlook animates the *Temporary Safe Haven Act*. It contains a series of measures that seek to prevent the Kosovars and Timorese from exercising any rights to apply for asylum or residency in Australia.

In a Schedule, the Act adds a new Subdivision AJ to the *Migration Act*, including a new Section 91H that explains its purpose: 'This Subdivision is enacted because the Parliament considers that a non-citizen who holds a temporary safe haven visa, or who has not left Australia since ceasing to hold such a visa, should not be allowed to apply for a visa other than a temporary safe haven visa. Any such non-citizen who ceases to hold a visa will be subject to removal under Division 8.' (Division 8 of the *Migration Act* makes it mandatory for immigration officers to detain and deport all non-citizens without valid visas 'as soon as reasonably practicable'.)

A new s.91K of the *Migration Act* provides that if the holder of a safe haven visa applies, or purports to apply, for a visa other than a temporary safe haven visa, 'then that application is not a valid application'. Section 4 of the *Temporary Safe Haven Act* adds that an application made before the commencement of the Act 'ceases to be valid' on the Act's commencement, 'despite any provision of the *Migration Act 1958* or any other law'. In order to 'avoid doubt,' s.4 states that this rule applies even if the application is the subject of a review or appeal to 'a review officer, body, tribunal or court'. Moreover, 'no visa may be granted to the non-citizen as a direct, or indirect, result of the application'. Section 5 also has a retrospective thrust. It states that temporary visas within Class UJ of the migration regulations are taken to be temporary safe haven visas on the commencement of the section.

Under new s.91L of the *Migration Act,* the Minister has a power, which must be exercised personally, to exempt safe haven visa holders from removal, 'if the Minister thinks it in the public interest'. But decisions to allow refugees to apply for other visas will only be made on a case-by-case basis, with each case to be explained by a statement laid before both Houses of Parliament. In a bid to protect this power from judicial review, the Minister 'does not have a duty to consider' whether to exercise that power, whether requested to do so by the non-citizen or any other person, 'or in any other circumstances'.

The Act attempts to preclude any legal challenge by safe haven refugees to decisions made concerning their status, including moves to remove them. Under a new s. 37A of the *Migration Act,* the Minister has a wide discretion to, by notice in the *Gazette*, extend or shorten the period of a safe haven visa. A visa may be shortened 'If, in the Minister's opinion, temporary safe haven in Australia is no longer necessary for the holder of a visa because of changes of a fundamental, durable and stable nature in the country concerned'. Reasons must be laid before each House of Parliament. Again, the Minister does not have a duty to consider whether to extend the visa of a non-citizen.

Likewise, ss.337 and 338 of the *Migration Act* are amended to ensure that a decision to refuse to grant, or to cancel, a temporary safe haven visa is not a 'reviewable decision' — that is, there is no right of appeal to the Migration Review Tribunal, the Refugee Review Tribunal or the Federal Court. The Minister's powers to shorten and not to extend, or not to consider, extending a visa is further shielded from review by three additions to s.475 of the *Migration Act.*

The *Temporary Safe Haven Act's* most elaborate provision adds a new s.500A to the *Migration Act* to empower the Minister to refuse or cancel a temporary safe haven visa, and to exempt such decisions from the requirements of procedural fairness and other grounds for legal challenge. To a large extent the wording is similar to the new s.501 of the *Migration Act* inserted by the Howard government in the *Migration Legislation Amendment (Strengthening of Provisions Relating to Character and Conduct) Act 1998 (Cth).*

Sections 500A and 501 contain vague and sweeping language entitling the Minister to refuse or cancel visas on grounds such as:

- lacking 'good character'
- criminal conduct
- having an association with others suspected of criminal conduct
- harassment, molestation, intimidation or stalking
- vilifying others or inciting discord
- representing 'a danger to the Australian community'.

Both sections specify that harassment or molestation does not have to involve violence or threatened violence to a person.

Despite these common provisions, 500A discriminates against safe haven refugees in four respects. First, their visas can also be denied or cancelled on grounds of 'national security' and 'prejudice to Australia's international relations'. This raises the danger of the refugees' interests being subordinated to the Australian government's relations

with, say, Indonesia or Portugal. Second, the Minister only has to be of the opinion that 'there is a significant risk' of detrimental conduct. That is, no actual misconduct has to take place. Third, not only the rules of natural justice (procedural fairness) but also the code of procedure in Subdivision AB of Division 3 of Part 2 of the Act are excluded (that Subdivision has minimal requirements relating to official communication with applicants and having regard to all the information in their applications).[18] Finally, refusals and cancellations automatically apply to applicants' immediate family members, even if the latter are not notified of the decision. This last measure seems designed to prevent applicants' children, including any children newly-born in Australia, from acquiring any rights to stay.

How then might the refugees from Kosovo and Timor challenge any forcible removal from Australia or seek refugee or residency status? Given the courts' past aversion to privative or ouster clauses,[19] there may still be scope for review in the Federal Court, perhaps depending on the individual circumstances of an applicant or his or her treatment by the government. In the light of the decisions in *Eshetu* and *Abebe*, however, it seems likely that an appeal would have to be sought direct to the High Court, under s.75(v) of the Constitution, with resultant extra cost and delay. Then too, the likelihood of success might depend on whether the facts of the case might assist a claim such as, for example, jurisdictional error or error of law on the face of the record, or, perhaps, exceeding power or denial of procedural fairness.[20]

Given the ongoing tensions and conflicts in both Kosovo and East Timor, the *Temporary Safe Haven Act* clearly puts Australia at risk of breaching a cardinal principle of refugee law, that is the 'refoulement' doctrine enshrined in various Conventions, including Article 33 of the Refugees Convention. That measure injuncts governments against expelling people whose 'life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion'.

I have suggested elsewhere[21] three reasons why refugee and immigration law has become a source of bitter conflict and growing litigation in the 1990s. The plea issued by one text writer for a 'cessation of hostilities'[22] between the judiciary and the government over the plight of immigrants and asylum seekers has gone unheeded in Canberra's political corridors of power. One hopes that the legal profession and the High Court will not retreat from the field of battle when it comes to the Kosovar and Timorese refugees, or any other displaced persons for that matter.

References

1. Philip Ruddock MP, media release, 14 September 1999. Statements sourced to Philip Ruddock throughout this article can be found at <www.minister.immi.gov.au/media_releases/media99/index99.htm>.
2. *Australian*, 10 September 1999, p.2.
3. On 29 September 1999 the Minister issued a media release stating, in part, 'Mr Ruddock met with Kosovars at the East Hills safe haven earlier today to reiterate the Government's position on their return to Kosovo. "No living allowances, phone cards, Internet and other facilities will be available at East Hills to Kosovars", Mr Ruddock said. "The only exceptions to this would be those people who are medically unfit to travel. All other Kosovars can move to the havens I have specified — or better still go home by 30 October with the $3000 winter reconstruction allowance we have generously offered ... I have also made it abundantly clear that it is not a matter of "if" but "when" the Kosovars return."'

   In the second week of October 1999, Mr Ruddock visited Kosovar refugees at the Brighton barracks near Hobart and told them: 'I don't want it to come to this, but if people become unlawful, they may have to be taken into detention and removed from Australia'. See *Sydney Morning Herald*, 16 October 1999.
4. Australian Broadcasting Corporation news website, 9 October 1999 <www.abc.net.au/news/etimor/ind-9Oct1999-4.htm>.
5. See also 1998 1597 FCA, where Finkelstein J declined to afford the applicant refugee status and instead remitted the decision to the Refugee Review Tribunal to be heard and determined again according to law.
6. In early October 1999, the Howard government obtained an adjournment of its appeal to the Full Federal Court of Australia. The appeal had been due to open in Melbourne on the same day that Xanana Gusmao, the president of the Council of Timorese National Resistance (CNRT) was to address meetings in the city.
7. See the Schedule to the Bill, setting out a proposed new s.474 of the *Migration Act*.
8. Crock, Mary, *Immigration and Refugee Law in Australia*, The Federation Press, 1998, p.293.
9. The Bill adds new ss.193 (2) and 193 (3) to that effect in the *Migration Act*.
10. See also *R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598.
11. See *R v Coldham; ex parte Australian Workers' Union* (1983) 153 CLR 415; *R v Hickman; ex parte Fox and Clinton* (1945) 70 CLR 598; *O'Toole v Charles David* (1991) 171 CLR 232; and *Deputy Commissioner of Taxation v Richard Walter Pty Ltd* (1995) 183 CLR 168.
12. See, for example, the judgment of Gaudron J in *Abebe* 1999 HCA 14 at para. 103.
13. See for example, Gaudron and Kirby JJ: 'In essence, an unreasonable decision is one for which no logical basis can be discerned,' 1999 HCA 21 at para. 101.
14. See Department of Immigration and Multicultural Affairs Fact Sheet 62: Operation Safe Haven <www.immi.gov.au/facts/62haven.htm>.
15. *Sydney Morning Herald*, 7 April 1999.
16. *Australian*, 16 June 1999.
17. Department of Immigration and Multicultural Affairs Fact Sheet 62: Operation Safe Haven <www.immi.gov.au/facts/62haven.htm>.
18. Section 500A(11). Under s.500A(10), the Minister must notify the applicant of his decision, but failure to do so does not affect the validity of the decision.
19. See, for example, *Hockey v Yelland* (1984) 157 CLR 124 and *Svecova v Industrial Commission of New South Wales* (1991) 39 IR 328, and note also *Craig v South Australia* (1995) 69 ALJR 873.
20. Subject to what is said above — see ref. nos 10-13. Note also that the High Court may have to take steps to avoid being overwhelmed with applications. Under various amendments to the *Migration Act 1958* (Cth) it cannot remit cases to the Federal Court where the Federal Court no longer has jurisdiction. The High Court may, in practice, seek other ways of minimising restrictions on the Federal Court's jurisdiction.
21. 'A plea for "cessation of hostilities" in immigration law goes unheeded,' 1999 *Australian International Law Journal* (forthcoming).
22. Crock, above, p.299.