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No. 169 2001–02

Migration Legislation Amendment (Procedural
Fairness) Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Migration Legislation Amendment (Procedural Fairness)
Bill 2002

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Law and Bills Digest Group
17 June 2002

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Migration Legislation Amendment (Procedural Fairness) Bill 2002

Date Introduced: 13 March 2002

House: House of Representatives

Portfolio: Immigration and Multicultural and Indigenous Affairs

Commencement: The day after Royal Assent

Purpose

To amend the *Migration Act 1958* to exclude the common law rules of procedural fairness, and to make it explicit that the procedures set down in the statute are all that decision-makers must comply with.

Background

Judicial review

Judicial review is the power exercised by superior courts (the High Court, the Federal Court, the State and Territory Supreme Courts) to supervise administrative decision-making by public officials, whether Ministers or officers in Government departments and agencies. Judicial review of administrative action is unequivocally positioned as an aspect of the rule of law.¹ The executive government, like ordinary citizens, is subject to the law. Administrators have no power to act outside the boundaries of the law. The law is interpreted by the judges, whose function is to dispense justice according to law. Accordingly, one of the functions of the courts is to supervise the executive to ensure that it does not act *ultra vires* (beyond its power).²

Such judicial scrutiny is not concerned with the merits of a particular administrative decision, but whether the repository of public power has breached the limits placed upon that power by the Constitution, the common law or by Parliament, by doing something more than is authorised by that power, or by doing an authorised thing in an unauthorised way. For a successful applicant, the outcome of judicial review is that an impugned action is treated as not having occurred and is remitted to the decision maker to exercise the power within their legal authority.

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Judicial review of migration decisions

Judicial review of Commonwealth government decisions (including immigration decisions) by superior courts has always been available under the prerogative writs. Judicial review was constitutionally entrenched in Australia with the enactment of the Commonwealth Constitution in 1901, section 75(v) which protected the writs of prohibition and mandamus.³ Since the enactment of the *Administrative Decisions (Judicial Review) Act 1977*, which created simpler remedies and statutory grounds of review, the availability of judicial review of Commonwealth government decisions by the Federal Court was greatly simplified and has expanded significantly.

The *Migration Reform Act 1992* made significant amendments to the judicial review of migration decisions.⁴ It excluded judicial review of migration decisions under the general law,⁵ and established a migration-specific judicial review scheme in Part 8 of the *Migration Act 1958* ('the Migration Act'). It also introduced very detailed statutory provisions setting out procedures that must be followed in primary decision-making. This was intended to be a code, exhaustively setting out the content of the obligation of procedural fairness in the migration context.

Procedural fairness

Procedural fairness is a basic concept within judicial review. Courts have developed rules, known as the rules of natural justice or procedural fairness,⁶ which apply in situations where an administrator makes a decision which is adverse to an individual's right, interest or other legitimate expectation. In such circumstances, courts generally expect that the individual be given a right to be heard before the adverse decision is made. Thus, procedural fairness can be seen to be a concept which arises out of a fundamental sense of justice and good administration.⁷ It is about the proper process to be followed, and is not a substantive right.

An obligation to accord procedural fairness is routinely implied by courts, even when there is nothing explicit in legislation requiring it.⁸ However, the courts say that in certain circumstances it may be inappropriate to import this obligation. The rules are flexible, and a number of factors are relevant to determining whether in a particular statutory context there is an obligation to accord procedural fairness, and, if so, what the content of that obligation will be.⁹ It is clear that a right to be heard in relation to a decision does not guarantee a right to an oral hearing.¹⁰

Procedural fairness is one of the most frequently invoked grounds upon which judicial review of administrative decisions is sought. It is also one of the most difficult to define precisely, as its application in particular circumstances is complex and beset with uncertainties. This is not least because the content of the duty to act fairly depends entirely on the circumstances of the case, including the particular statutory provisions.¹¹

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Procedural fairness in the migration context

As Dr Mary Crock, a University of Sydney academic, expert in the area of immigration law, has stated, '[b]y the end of the 1980s, the courts appear to have accepted that the rules of procedural fairness applied to every class of migration decision.'¹² The *Migration Reform Act 1992* intended to exclude procedural fairness as a ground of judicial review. It did this in two ways. First, it prescribed in detail the procedures which administrative decision-makers and tribunals must follow in making decisions on visa applications. These statutory procedures were intended to exhaustively catalogue the content of the requirement to provide a fair hearing, and were intended to exclude the courts implying any additional requirements. In his second reading speech on the *Migration Reform Bill 1992*, the then Minister for Immigration and Ethnic Affairs, Gerry Hand, noted that:¹³

Under the reforms, decision making procedures will be codified. This will provide a fair and certain process with which both applicant and decision maker can be confident. Decision makers will be able to focus on the merits of each case knowing precisely what procedural requirements are to be followed. These procedures will replace the somewhat open ended doctrines of natural justice and unreasonableness.

....

Judicial review will only be possible after the applicant has pursued all merits review rights or where merits review is not available. Grounds for review will include failure to follow the codified decision making procedures set out in the Act. As the codified procedures will allow an applicant a fair opportunity to present his or her claims, failure to observe the rules of natural justice and unreasonableness will not be grounds of review.

Secondly, natural justice was specifically excluded as a ground for applying for judicial review of migration applications before the Federal Court.¹⁴

The High Court has upheld the exclusion of natural justice as a ground of review before the Federal Court, despite the attempts of that Court to find other ways to import the requirement.¹⁵

However, the High Court by a narrow majority in *Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22 ('*Miah*') rejected the notion that the procedures mandated in the Act for departmental decision-makers making decisions on visa applications constitute a code of procedure and exclude an additional requirement to accord procedural fairness.¹⁶ In that case, the departmental officer had relied on two reports that the situation in the country had changed and Mr Miah was no longer at risk of persecution. The officer did not give Mr Miah an opportunity to comment on the reports, as this was not required by the procedures set out in the Migration Act. Gaudron, McHugh and Kirby JJ in separate judgments each held that the rules of procedural fairness apply unless they are excluded by clear words or by necessary implication, and there was no such clear intention in the Act.¹⁷ Kirby J commented that '[t]hese proceedings do not reveal public administration or legal practice in Australia at their best.'¹⁸ Gleeson CJ and

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Hayne J in dissent considered that the statutory procedures excluded any additional requirement to accord procedural fairness.¹⁹

The decision in *Miah* came shortly after the decision in *Aala*.²⁰ In that case, all members of the High Court unanimously found that the Refugee Review Tribunal had breached the fair hearing rule by preventing an applicant for a refugee visa from putting his case. The Tribunal had told Mr Aala it had all the papers in front of it and had read them all, when in fact four handwritten statements by Mr Aala were not in the materials before it. Although there was no specific requirement in the Migration Act that the Tribunal allow the applicant to fully put his case, and the Act did set out in some considerable detail the procedures which the Tribunal was bound to follow, the Court was willing to imply such a requirement as an element of the rules of procedural fairness.

This Bill will reverse the decision in *Miah*, by providing a clear statement of intention to exclude the common law rules of procedural fairness. It expressly states that the procedures set out for the making of and review of decisions on visas under the Migration Act are exhaustive and that there is no further room for the importation of common law notions of procedural fairness. Thus, it will restore the situation which was intended by the *Migration Reform Act 1992*.

There have been questions raised as to whether this Bill is necessary at all, given that the *Migration Legislation Amendment (Judicial Review) Act 2001* recently introduced privative clause provisions into the Migration Act (s. 474) and replaced Part 8 of the Act. The effect of these provisions is to exclude judicial review of all decisions to grant, cancel or revoke visas, as well as to exclude judicial review of decisions of the Migration Review Tribunal and Refugee Review Tribunal.²¹ These ‘privative clause’ provisions are much broader than the mere exclusion of the common law rules of procedural fairness, however it is not possible for the Parliament to exclude the constitutionally entrenched right to apply for writs or an injunction against an officer of the Commonwealth under s. 75(v).

An almost identical Bill to the current one was introduced into the Parliament in September of last year but was not passed before Parliament was dissolved. Under that lapsed Bill there was no reference made to s. 474 of the Act – the privative clause. This may have left questions as to whether the resultant legislation could lead to the privative clause provisions being read down. That earlier Bill did not exclude judicial review on the ground of bias by the decision-maker, or judicial review where the statutory procedures have not been complied with. If the privative clause provisions were read in this context, it may have been that a court would have concluded the Parliament did not in truth intend, as the privative clause states, that decisions would be ‘final and conclusive’²² and not subject to review on any ground whatever. It would have been a matter of statutory construction how the courts read the coexistence of the provisions of the earlier Bill with the privative clause. The current Bill has addressed this question and includes a section which clarifies the intention of the Bill. It specifies that the amendments made by the proposed legislation should not be taken to limit s. 474 in any way.

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Parliamentary commentary and the position of significant interest groups

The Bill is the subject of an Alert from the Senate Standing Committee for the Scrutiny of Bills, which expressed its concern over the Bills purpose, i.e. to exclude the common law rules of natural justice from hearings by tribunals under the Migration Act. The Committee comments that:

The rules of natural justice have been developed over many years to ensure fairness in the application of the law. They should not be lightly cast aside.²³

The Bill has also been the subject of an enquiry by the Senate Legal and Constitutional Affairs Committee. The Government majority rejected claims that:

- the Bill may, through the exclusion of judicial supervision, make decision makers unaccountable and lead to poor administration
- the Bill's exclusion of judicial supervision is contrary to Australia's international obligations
- the Bill's exclusion of judicial supervision is contrary to the constitutional separation of powers, and
- the Bill was unnecessary, having regard to the privative clause.

The ALP and the Democrats both put in Dissenting Reports, with the ALP's contribution being augmented by comments from Senator Cooney, who reflected on the dangers of prejudicing the rule of law, arguing that the lack of curial oversight can jeopardise the proper behaviour of decision makers, and thereby jeopardise the rule of law. He called for an end to the erosion of rights and the legislative re-enactment of those already lost.

The primary report from the ALP argued that it was 'premature' to pass further legislation denying judicial review at this point of time. They said that the Parliament would be well advised to 'hear the views of the Courts' in cases currently before it before deciding on the wisdom of the current Bill. They also point out that in the period since the Labor Government's *Migration Reform Act 1992* (which sought to introduce the concept of a comprehensive code of procedure) there 'have been a number of court decisions regarding immigration matters...' which have, in effect led the Labor Party to view the privative clause 'with a great deal of caution' (while not actually opposing passage of that legislation).²⁴

The ALP's concerns mirrored the concerns of a large number of submissions to the enquiry. These concerns were that, until the current court cases looking at the effects of the privative clause are resolved, it would be unwise to pass further legislation on the issue.²⁵ Other submissions argued that, given the existence of the privative clause, there was no need for this further legislation.²⁶

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The clear majority of the submissions to the enquiry were firmly opposed to the proposed amendments. In particular there were submissions opposing the legislation from:

- The NSW Council for Civil Liberties
- Liberty: The Victorian Council for Civil Liberties
- The Law Council of Australia
- The Victorian Bar
- The International Commission of Jurists
- Australian Council of Social Services
- The Refugee and Immigration Legal Centre
- The Refugee Council of Australia
- Amnesty International, and
- Associate Professor Arthur Glass, University of New South Wales, Faculty of Law.

The Government members found support for their position from the NSW Bar Association, which applauded the prompt response of the Parliament to the majority's holding in *Re MIMA; Ex parte Miah* [2001] HCA 22, saying that:

The Bar Association emphatically supports the approach which thereby has the legislative branch of government promptly responding to the position of the judicial branch. The interplay of the two branches on matters of law permeated with policy is a strength of our system.²⁷

Among the submissions opposing the legislation there were widespread concerns that the amendments threatened the integrity of the common law's developed rules regarding natural justice.²⁸ In particular there was a concern that a lack of judicial oversight of administrative decisions could lead to bad decision making practice.²⁹

Other submissions argued that the current codification of the rules of natural justice in the area of migration law are inadequate.³⁰ For instance the Law Institute of Victoria said:

The Codes of Procedure laid down in the Migration Act fall far short of a codification of the rules of procedural fairness, and for this Bill to suggest that they are an adequate substitute is nonsense.³¹

Some felt it may be theoretically possible to enact a comprehensive code of procedure that would operate fairly, however, they felt the current legislation did not yet represent that goal. The Australian Council of Social Service commented:

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While clearer codification is a desirable goal in itself in relation to procedural fairness and simplicity, a review debate about the adequacy of the current codification of 'natural justice' provisions, in the light of experience with their operation, would be beneficial.³²

There were, however, some doubts expressed as to whether it would ever be possible to fully codify the rules of natural justice. These doubts were not confined to the various non-governmental organisations who put their views, but included the Department of Immigration and Multicultural and Indigenous Affairs ('the Department' or 'the Department of Immigration').³³ The Law Institute of Victoria commented that:

There is no reason in principle why those rules could not be codified legislatively, although experience suggests that no matter how detailed and comprehensive a codification, disputes arise as to meaning and judicial expertise is called upon to aid in the interpretation and application of legislation.³⁴

A number of submissions also focussed on the gravity of the consequences for applicants, particularly applicants for refugee visas. Given this gravity, it has been argued, it is inappropriate to exclude judicial oversight of the fairness of the decision making procedure:³⁵

...the importance of protecting a basic safeguard such as the right to judicial scrutiny of a denial of procedural fairness is particularly acute when the decision is on affecting refugees. In such cases, where the consequences of an unlawful decision are extremely grave, namely, being sent back to a situation of persecution, in contravention of Australia's international obligations.³⁶

The unaccountability of the executive which would result from the passage of the Bill was a theme for a number of bodies making submissions, with Liberty Victoria (the Victorian Council for Civil Liberties) arguing that they believe 'the rule of law is the foundation of our civil society' and that

The *Tampa* litigation, in which Liberty Victoria became involved, demonstrated all too powerfully how vital it is that Government be held accountable at law in proceedings before an independent judiciary.³⁷

Another of the issues that came through as a topic of concern from the submissions was the question of our international obligations to ensure that refugee claimants are given the same access to justice as our own nationals.³⁸ The Refugee Council of Australia also suggests that in order to comply with the spirit of the International Covenant on Civil and Political Rights (Article 14 of which provides that 'All persons shall be equal before the courts and tribunals...') Australia should ensure that those aggrieved by immigration decisions should have the same access to the courts given to people aggrieved by other administrative decisions. The Government majority rejected this argument on the grounds that not all applicants under the Migration Act are non-Australians, but that, as the Law Institute of Victoria recognises, many are Australian citizens:

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Although it is barely if at all defensible to discriminate against non-citizens as this Bill chiefly does, it should be borne in mind that it is not just non-citizens who are affected. Many review applicants are in fact Australian citizens who are sponsoring their spouses or close relatives to come here.³⁹

Main Provisions

The Bill inserts a number of sections which emphasise that certain provisions are ‘an exhaustive statement of the requirements of the natural justice hearing rule’. This means that if these procedures have been complied with, the courts may not imply any additional procedural fairness requirements, as occurred in both *Miah* and *Aala*.

The following table summarises the decisions in relation to which procedural fairness obligations apart from the statute have been excluded:

Provision	Type of decision	Required procedures
New section 51A	Decision of Minister or delegate to grant or refuse a visa	<ul style="list-style-type: none"> Procedures contained in Part 2 Division 3 Subdivision AB Methods of giving documents in sections 494A to 494D
New section 97A	Decision of Minister or delegate to cancel a visa because it was based on incorrect information	<ul style="list-style-type: none"> procedures contained in Part 2 Division 3 Subdivision C methods of giving documents in sections 494A to 494D
New section 118A	Decision of Minister or delegate to cancel a visa for non-compliance with conditions, or because of changed circumstances or other reasons	<ul style="list-style-type: none"> procedures contained in Part 2 Division 3 Subdivision E methods of giving documents in sections 494A to 494D
New section 127A	Decision of Minister or delegate to cancel a visa without notice for non-compliance with conditions, or because of changed circumstances or other reasons, where applicant is outside Australia	<ul style="list-style-type: none"> procedures contained in Part 2 Division 3 Subdivision F methods of giving documents in sections 494A to 494D

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Provision	Type of decision	Required procedures
New section 357A	Decision of the Migration Review Tribunal	<ul style="list-style-type: none"> • procedures contained in Part 5 Division 5 • procedures for the disclosure of confidential information in sections 375, 375A and 376 • procedures for provision of documents in Part 5 Division 8A
New section 422B	Decision of the Refugee Review Tribunal	<ul style="list-style-type: none"> • procedures contained in Part 7 Division 4 • procedures restricting use of evidence in subsequent RRT reviews in section 416 • procedures for the disclosure of confidential information in sections 437 and 438 • procedures for provision of documents in Part 7 Division 7A

Item 7 stipulates when the amendments apply to the various decisions.

Clause 1 of Item 7 provides that the amendments regarding decisions made by the Minister or a delegate to grant or refuse a visa will take effect when the application for the visa was made on or after Royal Assent to the Bill.

Clauses 2, 3 and 4 of Item 7 (decisions regarding the cancellation of visas either due to false information or non-compliance with conditions, changed circumstances or other reasons) will apply to decisions taken where a notice of the cancellation has been given on or after Royal Assent to the Bill (although if the applicant is outside of Australia the new provisions will apply as at the date of Royal Assent).

Clause 5 of Item 7 will apply to decisions of the Migration Review Tribunal and Refugee Review Tribunal when an application is made to the relevant tribunal on or after Royal Assent to the Bill.

Item 8 makes it clear that all the amendments of the current Bill are not meant to limit the privative clause at s. 474 of the Migration Act.

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New section 51A will directly reverse the High Court's decision in *Miah*.

New section 422B will have the effect of removing the additional requirement imposed by the High Court in *Aala*.

Concluding Comments

The Minister for Immigration and Multicultural Affairs, in his second reading speech, said that the Bill will:

restore the original intention of Parliament and ensure that all that is legally required by a decision-maker in relation to the visa-making process is to comply with the codes of procedure as set out in the Migration Act.⁴⁰

The Bill would also make Parliament's intention clear in relation to decisions for the cancellation of visas, and decisions of the Migration Review Tribunal and Refugee Review Tribunal.

The Bill is certainly effective to reverse the High Court's decision in *Miah* and will make Parliament's intention to exclude the common law rules of natural justice unmistakably clear.⁴¹ However questions may remain about the utility of some forms of external review or actions taken by the executive.

When giving evidence to the Senate enquiry, a Departmental spokesman conceded that *Miah* 'was a bad decision of a decision maker.'⁴² Presumably this comment includes a recognition of the importance of the review mechanism, which brought to light the 'bad' nature of the decision. However the avenues for having 'bad' decisions reviewed would be limited by the proposed legislation.

A paper prepared by the Department in December 2001⁴³ also recognises the flawed nature of a decision taken by the Department – a flaw which was in this case recognised and rectified by the Federal Court. The paper asserts the need to ensure procedural fairness in immigration decisions⁴⁴ and relies on principles established by the Federal Court to illustrate its position.⁴⁵ The current Bill and the effects of the privative clause are designed to deprive the Department of the future benefits of such considerations. By excluding external review of decisions the executive is left as the regulator of its own rectitude. The Refugee and Immigration Legal Centre comment that it would be a pity if the Bill has the effect that the

code of procedure is not subject to jurisprudential developments in relation to common law rules of natural justice, and thus will not continue (to the extent that they already do) to so develop.⁴⁶

A number of bodies have given consideration to the competing claims of a reliably fair justice system and the need for speed and efficiency. The NSW Council of Civil Liberties and Liberty Victoria comment that,

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there is, and always will be, a tension between the objectives of speed and efficiency, on the one hand, and the requirements of procedural fairness on the other.⁴⁷

Balancing these two considerations is a difficult political decision with important ramifications for Australia's system of justice.

Endnotes

- _____
- 1 Chief Justice Gleeson, “Courts and the Rule of Law”, speech, Melbourne University, 7 November 2001, p. 12.
- 2 For a discussion of the theoretical principles underpinning judicial review, see B Selway, “Judicial Review – A Process in Search of a Principle” (1998) 19 *AIAL Forum* 18; Naomi Sidebotham, “Shaking the Foundations: Dicey, Fig Leaves and Judicial Review” (2001) 8(3) *Aust J Admin Law* 89. See also Krysti Guest, Bills Digest for the Migration Legislation Amendment (Judicial Review) Bill 1998, No 90 of 1998-99 at <http://www.aph.gov.au/library/pubs/bd/1998-99/99bd090.htm>.
- 3 In 1983, with the insertion of section 39B of the *Judiciary Act 1903*, the Federal Court was given concurrent jurisdiction with the High Court with respect to the constitutional writs.
- 4 For more detail, see Hon P Ruddock, “Narrowing of Judicial Review in the Migration Context” (1997) 15 *AIAL Forum* 13 at 15-16; M Crock, “Judicial Review and Part 8 of the *Migration Act*: Necessary Reform or Overkill?” (1996) 18 *Syd L Rev* 267 at 270–274.
- 5 *Migration Reform Act 1992* No. 184 of 1992.
- 6 Often these concepts are used interchangeably, see Justice J von Doussa, ‘Natural Justice in Federal Administrative Law’ (1998) 17 *AIAL Forum* 1 at 1. In *Re Refugee Review Tribunal; Ex parte Aala* (2000) 176 ALR 219, Gaudron and Gummow JJ used the term ‘procedural fairness’ at [41]-[42] and ‘natural justice’ at [38], McHugh J referred throughout to ‘natural justice’, as did Callinan J at [201] and [210], and Hayne J referred to ‘procedural fairness’. Kirby J considered that ‘procedural fairness’ may be a more narrow term than ‘natural justice’, at [127].
- 7 See Justice J von Doussa, ‘Natural Justice in Federal Administrative Law’ (1998) 17 *AIAL Forum* 1 at 2.
- 8 *Kioa v West* (1985) 159 CLR 550 at 584 per Mason J, 619 per Brennan J, 632 per Deane J. Later, in *Haoucher* (1990) 169 CLR 648 at 653, Deane J said ‘the law seems to me to be moving towards a conceptually more satisfying position where common law requirements of procedural fairness will, in the absence of a clear contrary legislative intent, be recognised as applying generally to governmental executive decisions-making’.
- 9 See *Russell v Duke of Norfolk* [1949] 1 All ER 109; *Minister for Immigration and Ethnic Affairs v Pochi* (1980) 31 ALR 666 at 686-689 per Deane J.
- 10 See the decision in *Kioa v West* (1985) 159 CLR 550.
- 11 Justice J von Doussa, ‘Natural Justice in Federal Administrative Law’ (1998) 17 *AIAL Forum* 1 at 9, see also at 2–4.

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- 12 M Crock, “Judicial Review and Part 8 of the *Migration Act*: Necessary Reform or Overkill?” (1996) 18 *Syd L Rev* 267 at 277.
- 13 The Hon. Gerry Hand MP, Minister for Immigration, Local Government and Ethnic Affairs, second reading speech on the Migration Reform Bill 1992, House of Representatives, *Hansard*, pp. 2621, 2623, 4 November 1992.
- 14 Subsection 476(2) of the *Migration Act 1958*.
- 15 In *Eshetu*, the Federal Court held that the requirement that the Refugee Review Tribunal act according to ‘substantial justice and the merits of the case’ (section 420) created an obligation to observe the requirements of natural justice, despite Part 8 explicitly excluding natural justice as a ground of review. The High Court unequivocally rejected this reasoning in *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611.
- 16 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 179 ALR 238.
- 17 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22 at 58 per Gaudron J; at 155 per Kirby J; at 109 per McHugh J.
- 18 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22 at 155 per Kirby J.
- 19 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* [2001] HCA 22 at 53 per Gleeson CJ and Hayne J.
- 20 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 176 ALR 219.
- 21 Subsection 474(4) of the *Migration Act 1958* preserves judicial review of certain narrow classes of decisions, related to costs associated with detention, removal or deportation including the handling of seized property, searches of persons or vessels, and the constitution and operation of the Migration and Refugee Review Tribunals.
- 22 Section 474 of the *Migration Act 1958*.
- 23 *Alert Digest*, Senate Standing Committee for the Scrutiny of Bills, No. 3 of 2002, 20 March 2002, p. 35.
- 24 Dissenting Report by Labor Party Senators, Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Legislation Amendment (Procedural Fairness) Bill 2001*, p. 1.
- 25 Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Legislation Amendment (Procedural Fairness) Bill 2001*. For example, Refugee and Immigration Legal Centre, *Submission No. 10*, and oral evidence *Transcript of Evidence*, p. 45; NSW Council for Civil Liberties, *Submission No. 2*; Law Institute of Victoria, *Submission No. 7*; Amnesty International, *Submission No. 6*.
- 26 For example Senate Legal and Constitutional Legislation Committee, *Inquiry into the Migration Legislation Amendment (Procedural Fairness) Bill 2001*, The Law Institute of Victoria, *Submission No. 7* (hereinafter referred to as 'Submission'), and the Law Council of Australia, *Submission No. 9*.
- 27 The New South Wales Bar Association, Bret Walker, S.C., President, *Submission No. 1*, p. 1.

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- 28 International Commission of Jurists, *Submission No. 8*; The Victorian Bar, *Submission No. 11*; Law Council of Australia, *Submission No. 9*.
- 29 The Victorian Bar, *Submission No. 11*, p. 3; Law Institute of Victoria *Submission No. 7*.
- 30 For example, Associate Professor Arthur Glass, UNSW, *Submission No. 3*; Law Institute of Victoria, *Submission No. 7*; Refugee and Immigration Legal Centre, *Submission No. 10*, p. 3.
- 31 Law Institute of Victoria, *Submission No. 7*.
- 32 Australian Council of Social Service, *Submission No. 4*.
- 33 Senate Legal and Constitutional Legislation Committee, Inquiry into the Migration Legislation Amendment (Procedural Fairness) Bill 2001, *Transcript of Evidence*, p. 53.
- 34 Law Institute of Victoria, *Submission No. 7*, p. 1, Annexure "B".
- 35 Amnesty International *Submission No. 6*; The Victorian Bar, *Submission No. 11*; NSW Council for Civil Liberties *Submission No. 2*, Refugee Council of Australia, *Submission No. 12*.
- 36 Refugee and Immigration Legal Centre, *Submission No. 10*, p. 6.
- 37 Liberty Victoria - The Victorian Council of Civil Liberties, *Submission No. 15*, p. 1.
- 38 *Convention Relating to the Status of Refugees*, 1951, Article 16 provides 'A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *judictum solvi*.' Stateless persons are afforded the same rights by the 1954 *Convention Relating to the Status of Stateless Persons*.
- 39 Law Institute of Victoria, *Submission No. 7*, p. 4
- 40 The Hon. Philip Ruddock MP, Minister for Immigration and Multicultural Affairs, second reading speech on the Migration Legislation Amendment (Procedural Fairness) Bill 2001, House of Representatives, *Hansard*, p. 31629, 27 September 2001.
- 41 *ibid.*
- 42 Senate Legal and Constitutional Legislation Committee, Inquiry into the Migration Legislation Amendment (Procedural Fairness) Bill 2001, *Transcript of evidence*, p. 53.
- 43 *The Internal Flight Alternative: An Australian Perspective A paper prepared as a contribution to the UNHCR's expert roundtable series 2001*, Refugee And Humanitarian Division, Department of Immigration & Multicultural & Indigenous Affairs, Canberra, Australia.
- 44 *ibid.*, p. 15.
- 45 *David v MIEA* (Wilcox J, unreported, 12 October 1995).
- 46 Refugee and Immigration Legal Centre, *Submission No. 10*, p. 6.
- 47 Liberty Victoria, - The Victorian Council of Civil Liberties, *Submission No. 15*, p. 2.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.