# THE ROLE OF THE COURTS

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The papers in this session are concerned with three forms of 'external review' of administrative decisions namely tribunals, the Ombudsman and the courts. In considering the role of the courts I will briefly describe the nature and foundations of the review function undertaken by courts, that is judicial review, identify a number of features of judicial review and compare and contrast them with review undertaken by the Ombudsman and tribunals. I will then consider a particular criticism of judicial review which I consider throws some light on the features I identify. For reasons of both space and time I will concentrate exclusively on the Federal sphere although some of what is discussed is applicable to judicial review at a State level.[1]

**Nature of judicial review**

In *Attorney-General v Quinn*[2] Brennan J described the function of courts undertaking judicial review in the following terms[3]:

> The duty and jurisdiction of the Court to review administrative action do not go beyond the declaration and enforcement of the law which determines the limits and governs the exercise of the repository's power, If, in doing so, the court avoids administrative injustice or error, so be it, but the court has no jurisdiction to simply cure administrative injustice or error. The merits of administrative action, to the extent to which they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone.

Thus the court's only function is said to be determining the limits of the power of the decision maker or the legality or validity of the decision in question. What is the source and rationale for this function?

At a Federal level the question of source of the power of courts to engage in judicial review invites further questions as to the jurisdiction of the court in question and the source of the legal obligation or limit on power that is alleged to have been transgressed. With the High Court its power as a court of first instance to review the legality of administrative decision-making is conferred by the Constitution itself.[4] It cannot be removed and any attempt to regulate it will be closely scrutinised.[5]. The High Court also reviews the decisions of lower courts in the exercise of its appellate jurisdiction.[6] The judicial review functions of the Federal Court and the Federal Magistrates Court are conferred and limited by various pieces of federal legislation principally the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (the ADJR Act), s 39B of the *Judiciary Act 1903 (*Cth) and ss 476 to 476B of the *Migration Act 1958* (Cth).[7]

However this does not answer all the relevant questions about how one ascertains whether or not in a given case the relevant legal obligation has been performed or a limit on power has been transgressed. With the High Court's original jurisdiction under s 75(v) and the Federal Court's jurisdiction under s 39B of the *Judiciary Act* 1903 (Cth) there has to be identified a 'jurisdictional error'.[8] With the Federal Court's jurisdiction under the ADJR Act there has to be made out one of the grounds in ss 5 or 6 of the ADJR Act which in turn presupposes that there was some form of obligation to take or not take the step referred to in those provisions; eg to take into account a particular consideration or afford procedural fairness. The courts undertake the inquiry into the existence of the limit on power by applying

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legal technique but the source of the obligation on the decision matter or the limit on their power is a much debated question. The two competing schools are the common law (except as expressly displaced by statute) or the legislation itself.[9] There is also a deeper question as to whether the Constitution embodies some minimum content of judicial review and, if so, what?[10] However for present purposes I need only identify the debate before moving on.

What is the rationale for judicial review, if any? The existence of a power in the High Court to undertake judicial review in Australia has never been questioned and, given the terms of the Constitution it is difficult to see how it could be questioned. For that reason I suppose there has been little reason for the courts to debate its utility. (Parliament on the other hand appears from time to time to comment upon it in either expanding its availability or curtailing it.) To the extent that it has been mentioned in the cases the underlying rationale has been stated as the rule of law[11] being that part of the rule of law which is concerned with government under law.
Balanced against this is what is described as the need for judicial restraint in interfering with government decisions. Both Gleeson CJ and Spigelman CJ have commented upon the balance that courts need to undertake to preserve 'judicial legitimacy'.[12] The point I make is that the rule of law and judicial legitimacy being the measures applied to courts are a very different set of yardsticks than those applied to Ombudsman and tribunals.[13] As I will discuss, it can be difficult to evaluate the criticisms of the courts for failing to preserve their 'legitimacy'.

**Some features of judicial review**

I would like to now identify four (by no means exclusive) features of judicial review relevant to this topic and compare and contrast them with the position of tribunals and the Ombudsman.

First, there is the constitutional independence of Federal courts in conducting review. As I have already stated, the High Court's judicial review function is constitutionally entrenched. While that is not the case for other Federal courts,[14] to the extent they are given a judicial review function they cannot be the subject of interference or direction in its exercise.[15] In terms of 'external review' the courts are the most external of all in that they are a separate and independent arm of government. There are, of course, a number of provisions in various pieces of legislation which offer a degree of institutional independence to tribunal members[16] and the Ombudsman.[17] However they do have offer life tenure, they are often required to comply with or take into account some form of Ministerial or Departmental direction or policy[18] and their tenure and terms can be altered by Parliament.

However, at another level, the tenure of the court's judicial review function can be fragile. If one of the measures applied to the court's performance is the maintenance of 'judicial legitimacy' then it can be a harsh standard when their decision or processes frustrate others especially the Executive. The charge they have gone too far can be easily made. The courts cannot defend themselves against the charge and there is no one that can do it on their behalf. If criticisms are made of the Ombudsman then he or she can put their case both to the public, the Executive and to Parliament. The position is not quite so clear with tribunals but I cannot see any reason why the head of a tribunal cannot defend either the institution or an individual decision if he or she chooses.

Second, there is the point made by Brennan J in the quote from *Quinn* namely that the role of the court is not to consider the merits of the decision but the legal limits on the person or body who made it. The distinction between merits and legality is at the heart of judicial review however it can be hard to draw. Justice Brennan did not state that courts were unconcerned with the merits of an administrative decision *per se* only that they were immaterial if they could be distinguished from a consideration of its legality. In my experience

when there is room for argument about what is the relevant legal obligation imposed on a decision-maker, an analysis of some aspect of the 'merits' of that decision inevitably intrudes.

Conversely those bodies that examine the merits of administrative decisions, i.e. the Ombudsman and tribunals, will often consider the legality of the decisions or practices they are examining. Professor McMillan has described how his role as Ombudsman often requires him to review and advise upon the legality of administrative action. He describes this role as enhancing the rule of law.[19] Equally, one often sees how tribunals tasked with determining the correct and preferable decision have to first ask themselves what decisions are legally permissible? However, allowing for the performance of those functions by others, the task of determining conclusively the limits of the power of an administrative decision-maker is for the courts alone to perform.[20]

Third, as the court's function is solely concerned with determining the legal validity of the decision and, as that is to be ascertained in accordance with legal method, there is minimal room for considering the type of issues that might arise if one was analysing the decision from a perspective of ensuring good or efficient administration. In construing statutory provisions consideration is sometimes given as to what might be involved in terms of convenience or potential cost in future cases if one construction or another is adopted.[21] However there is never any empirical analysis of this nor any consideration of the effect of invalidating a particular decision on past decisions or on other cases (nor am I saying there should be). Once a determination is made that the relevant legal limitation has been transgressed the court will not consider such matters as the cost or effect of compliance or the effect on other decisions. To a large extent this observation is probably true of tribunals but in my limited experience of Ombudsman these are the type of considerations that they will or might consider in their dealings with Departments.

Fourth, the role of the courts is fundamentally a passive one. They do not initiate or invite judicial review. Their function is limited to hearing and determining applications made to them. Tribunals are also limited to hearing and determining the applications before them but many of them have an ability to inquire beyond the arguments and materials presented to them.[22] In contrast, the Ombudsman may initiate inquiries into administrative action on his or her own initiative and has a discretion not to investigate a complaint.[23] The courts cannot close their doors and have to listen to everyone who comes in. I will discuss this constraint on courts further. I think it is often overlooked.

Against this background I wanted to spend a little time revisiting an influential criticism of the Federal Court's role in reviewing immigration decisions and, in particular, the allegation that as an institution it systematically traversed the merits/legality divide.

**Criticism of the Federal Court**

In 1999 the *AIAL Forum* published an article by Professor McMillan critical of the Federal Court's role in conducting judicial review of immigration decisions. It was entitled 'Federal Court v Minister for Immigration'.[24] A number of articles to similar effect followed.[25] The article received a great deal of publicity at the time that the events involving the 'Tampa' were unfolding[26] and its conclusions were discussed in the print and electronic media.[27] As far as I can know it is the only time that a discussion of a court's role in judicial review has 'cut through' to the mainstream of political debate in the last 25 years.

In 'Federal Court v Minister for Immigration' Professor McMillan reviewed a number of decisions of the Federal Court which were later found either by the High Court or a Full Court of the Federal Court itself to have crossed the merits/legality divide. The article rejected the suggestion that this was merely the operation of the 'appellate process at work

in the correction of legal error at the trial level'. Instead it suggested that there was a 'deeper' problem with the Federal Court:

> …During the last decade of judicial review by the Federal Court, there appears at any time in that period to be a principle or theme that predominates in the explanations given by the Court as to why immigration decisions are invalid. As each such theme is, in turn, annulled either by legislative action or by appellate court review, it is replaced by another theme that delivers the similar result of invalidity.[28]

The article then traced the rise and fall of various grounds of judicial review noting that the ground then in vogue in the Federal Court was the complaint that the relevant immigration tribunal had not properly complied with its obligation to set out the reasons for its decision.[29] At a later point the article summed up its central thesis as follows:

> … the present system of administrative review of refugee determinations is inappropriate. The distortions that are caused by judicial overreach are inimical not only to immigration adjudication, but to administrative law generally and no doubt in the mind of some, to public policy in the operation of government and the relationships between the branches of government. *(emphasis adde*d)

The article then repeats the proposition stated earlier:

> The pattern of judicial overreach has been continuous, changing only to shift ground from one legal principle to another… this pattern has continued despite the contrary directions of the High Court and the Parliament.[30] *(emphasis added)*

What 'distortions' were said by the article to be caused by 'judicial overreach'? The relevant footnote cross-refers to two other footnotes.[31] One stated that there had been a rise in the number of migration cases filed in the Federal Court from 84 in 1987/1988 to 871 in 1998/1999.[32] The other stated that, despite the success rate for applications for judicial review of immigration decisions remaining at around 10%[33], 'judicial merits review [had] arguably been a factor in the increase' in other elements of the litigation process namely the number of filings, the delay in dealing with cases and the cost to the Department of defending them. However the latter two matters are generally a function of the first and so the identified 'distortion' from 'judicial merits review' appears to be a greater number of litigants chancing their arm and filing applications.

I remember reading that article and having some personal views on these conclusions given that I spent a little bit of time in the system that was being scrutinised. As I read the article, I understood that it was not merely taking issue with the particular decisions of particular judges but was instead making a claim against the Federal Court as an institution as a whole ('Federal Court v Minister for Immigration'*;* 'pattern of judicial overreach' etc). This was what was conveyed in media reports.[34]

With the benefit of hindsight the article's two critical conclusions namely that the existence of an institutional agenda on the part of the Federal Court and the 'distorting effect' of that agenda can be revisited.

The notion of the Federal Court having an agenda to invalidate immigration decisions and then being corrected by High Court has had an interesting time since. If you accept the article's premise, and you may have guessed that I do not, then the High Court has turned from gamekeeper to poacher.

The criticism of the Federal Court for reviewing decisions based on the inadequacy of the written reasons had a good start in May 2001 when the High Court decided *Yusuf*[35] and swept away that ground of review. However, *Yusuf* also interpreted the former Part 8 of the *Migration Act 1958* (Cth) as allowing judicial review for an extended concept of jurisdictional error that was very much to the same effect.[36] In October 2001 a *Hickman*[37] style privative

clause was inserted into the *Migration Act*.[38] In August 2002 a five member Full Court of the Federal Court decided *NAAV*.[39] In doing so they construed the privative clause fairly widely leaving very little scope for judicial review. However six months later the High Court decided *Plaintiff S157*[40] holding that it did not protect immigration decisions from 'jurisdictional error'. A number of cases have confirmed that most forms of legal error on the part of an administrative tribunal are 'jurisdictional'[41]. A non-jurisdictional error of law on the part of an administrative tribunal is a very rare species.[42]

*Plaintiff S157* radically altered the perceptions of many as to the form of judicial review that was thought to be available after the enactment of the privative clause. It all but destroyed the practical effect of a number of time limits imposed on applications for judicial review of immigration decisions at the same time.[43] Since *Plaintiff S157* there has been what I might call the usual ebb and flow between the Federal Court and the High Court. The Federal Court has been grappling with the proper interpretation of statutory provisions codifying the rules of procedural fairness.[44] The High Court has been strongly protective of what is required by procedural fairness[45] and insistent on complete compliance with its statutory equivalents.[46]

From the time the High Court decided *Eshetu*[47] in 1999 until its decision in *Plaintiff S157* in 2003 there were no changes in its composition.[48] The five member Full Court that decided *NAAV* had been with the Federal Court throughout the entire period identified in Professor McMillan's article.[49]

The only conclusions that I would form from this are negative ones. In the years after 1999 there has not been any trend of decisions suggesting an agenda in the Federal Court to invalidate immigration decisions and, if anything, it has been less inclined to find invalidating error than the High Court. I also think this throws light on the prior period considered in Professor McMillan's article. In 1994 Parliament ceased to apply the ADJR Act to immigration decisions and instead created a truncated judicial review scheme for the Federal Court. The High Court's original jurisdiction was untouched.[50] When this change was combined with a large increase in the number of cases and numerous changes to other parts of the *Migration Act* it meant that the Federal Court was adapting to a very different judicial review environment at the same time as it received a heavy increase in its workload.

In my view the period from 1994 up to *Plaintiff S157* should not be seen as involving systemic blasphemy by the Federal Court, but was a reconsideration of the underlying principles of judicial review by the courts generally. If you walked into an administrative law pet shop in 1995 the local galah was talking about 'grounds of review'. If you walked in to the same shop in 2004 the same bird was squawking 'jurisdictional error'. There was and is always scope for criticism of individual judgments, individual judges, judicial delay and particular doctrine but the 'agenda claim' against the Federal Court as an institution was, and is not, supportable. The Federal Court bore the brunt of changes on a number of fronts: substantive, procedural and quantity. It worked through them as best it could.

What can the subsequent years tell us about the alleged 'distortions' resulting from the Federal Courts so called 'judicial overreach'? As a matter of principle I had difficulty seeing why an increase in filings was necessarily seen to be a 'distortion'. An increase in filings especially among a group who were generally under-resourced might be seen as the courts ensuring access to justice and enhancing the rule of law. At a factual level I was always dubious that the scores of unrepresented litigants who rolled in to the Federal Court were poring over the fate of the ground of review that was flavour of the month. I suspected that they were often litigants with little to lose from undertaking the last roll of the dice. If there was an avenue of review open, they would take it.

Overall, it seemed to me that no solid conclusions could be formed unless the data was interrogated further to find out why the applications were being filed and whether the increases were related to any underlying policy or legislative changes. Were there higher refusals of on shore applicants in this time? Were the criteria for making the decisions radically changed or tightened? I had not done that analysis and none was mentioned in the article.

In any event, if the number of filings is said to be the guide then the Federal Courts' alleged 'judicial overreach' did not have the causal affect that was suggested in Professor McMillan's article. The article noted that there were 871 filings in the Federal Court in 1998/1999.[51] According to the Federal Court's annual reports there were 967 in 1999/2000 and 1343 in 2000/2001. In October 2001 the Federal Magistrates Court acquired a jurisdiction to review immigration decisions. The combined figure for the Federal Court and the Federal Magistrates Court in 2001/2002 was 1563, the combined figure for 2002/2003 was 3231 and the combined figure for 2003/2004 was 5637.[52] Those latter two figures are boosted by a large number of remittals from the High Court to the Federal Court and I suspect that combining both Court's figures might involve some doubling up because of referrals from the Federal Court to the Federal Magistrates Court.

I do not suggest that these figures can be taken very far. I suspect but do not know that the increase in filings that followed *Plaintiff S157* may have been because of the effect of the case on time limits or it may have been because a wider scope of review became available or both. However the figures for the number of filings in the period prior to *Plaintiff S157* are revealing. The figures for the years 2001/2002 to 2002/2003 include the period from October 2001 to February 2003 when there was in force a privative clause that was understood by many to oust almost all judicial review. Those figures are significantly higher than the figures for the number of filings in the latter part of the 1990's which were the subject of Professor McMillan's article. This is inconsistent with his assertion that any agenda on the part of the Federal Court to invalidate decisions was leading to 'distortions' in the sense of an increase in court filings. The available evidence suggests that in the period from October 2001 to February 2003 the number of filings kept increasing despite the attempt to dramatically narrow the scope of judicial review.

This brings me back to the fourth aspect of the role of courts and judicial review that I identified earlier. The duty of the Federal Court is to decide cases that are brought to it to determine. The nature of its function in determining the law is adversarial in that it must adjudicate on the issues raised by the parties before it. The fact that over the last twenty years various grounds of review have risen and then fallen only to be superseded by new ones is not surprising. One would expect that to occur as one avenue of argument is closed off by a higher court decision or legislative change or corrective action by decision-makers.

However it is not the court but the remaining litigants who then seek to argue new grounds or focus attention on existing grounds that have not been considered in much detail. For example, the ground of review that was based on the inadequacy of the written reasons that was criticised in Professor McMillan's article had its origins in decisions that had nothing to do with immigration.[53] What was different about the late 1990's to the prior period was that instead of the ground only being argued a couple of times a year under the ADJR Act it was being argued a couple of times a day under the former Part 8 of the *Migration Act*. When this process of focusing attention on new grounds is mixed with an explosion in the number of cases in one area before the Court then it might appear to some that the Court, in responding to the cases before it and the arguments made, is somehow endorsing that process. It is not. It is merely performing its duty within the constraints imposed on it.

With the benefit of another eight years since the publication of Professor McMillan's article the large volume of largely unsuccessful migration litigation looks more like the playing out of

an interaction between underlying social forces and various policy and legislative changes with some of the latter being unsuccessful in achieving their aims. The changing fortunes of the Federal Court's various doctrines and its fundamentally passive role in determining the cases brought to it by others appears to be a bit of sideshow in that interplay. I think we should all bear that in mind as we contemplate the impact of external administrative review by the courts on immigration decisions and, if the events are repeated elsewhere, on other administrative decisions.

**Endnotes**

1 See Spigelman, '*The Integrity Branch of Government*' (AIAL National Lecture Series - Administrative Law No. 2) at pp. 9-10
2 (1990) 170 CLR 1
3 *Quinn* supra at 35 – 36
4 ss 75(iii) and 75(v)
5 See *Bodruzza v MIMIA* [2007] HCA 14 at [53]
6 S 73 of the Constitution
7 See also s 44(1) of the *Administrative Appeals Act 1975* (Cth); by way of example, s 44ZR(1) of the *Trade Practices Act* 1975 (Cth).
8 See *Re RRT; ex parte Aala* (2001) 201, CLR 81 esp at [51] to [52] (per Gaudron & Gummow JJ); *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at [76];
9 See Spigelman, 'The Integrity Branch of Government' (2004) 22 AIAL 1 at p.8 and footnotes 21 to 24.
10 See *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476 at 513; Kirk, 'The entrenched minimum provision of Judicial Review' (2004) 12 AJ Admin Law 64
11 *Plaintiff S157/2006 v* Commonwealth (2003) 211 CLR 476 at 513 to 514; See *Re MIMA; ex parte Lam* (2003) 214 CLR 1 at [72], per McHugh and Gummow JJ
12 Gleeson AM, '*Judicial Legitimacy*' (2000) 20 Aust Bar Rev 4; Spigelman, "The Integrity Branch of Government" AIAL National Lecture Series on Administrative Law No 2 at p.13.
13 An empirical analysis of the practical effects of judicial review outcomes is to be found in McMillan and Creyke 'Judicial Review Outcomes – An empirical study' (2004) 11 AJ Admin L82.
14 See *Abebe v The Commonwealth* (1999) 197 CLR 510.
15 *Chu Keng Lim v Minister for Immigration* (1992) 176 CLR 1 at 36.
16 See for example ss 7 and 13 of the *Administrative Appeals Tribunal Act 1975* (Cth)
17 See ss 22 and 28 of the *Ombudsman Act* 1976 (Cth).
18 See for example s. 499 of the *Migration Act 1958* (Cth) and *Drake and Minister for Immigration* (No 2) (1979) 2 ALD 634.
19 McMillan, 'The Ombudsman and the Rule of Law' (2005) 44 AIAL 1.
20 *Plaintiff S157* at [75]
21 See Pearce and Geddes, *Statutory Interpretation in Australia* (5th edition) at pp 45 – 48; and by way of example *Muin v RRT* (2002) 76 ALJR 966 at [106] to [112] (per Gummow J).
22 See for example the description of the Refugee Review Tribunal as "inquisitorial" in *Abebe supra* at [187] (per Gummow and Hayne JJ.)
23 Sub-section 8(1) of the *Ombudsman Act* 1976 (Cth); S.8 of the *Ombudsman Act* 1976 (Cth) deals with investigation and does not require a "complaint".

24 (1999) 22 AIAL 1.
25 e.g. McMillan, Commentary; *Recent Developments in Refugee Law*, (2000) 26 AIAL 26 and McMillan, *The Role of Judicial Review in Australian Administrative Law*, (2001) 30 AIAL 47
26 See Kelly, 'Defiant Court Provoking Political Wrath' in *The Australian* 5 September 2001
27 Kelly supra; ABC Radio National 'Asylum Seekers and the Courts: Our man in Kabul' 25/11/01; ABC 7.30 Report, 05/09/01.]
28 McMillan, 'Federal Court v Minister for Immigration' at p 4.
29 *McMillan supra* at pp 5 to 7
30 *McMillian supra* at p.14
31 Footnotes 1 and 30
32 Footnote 1
33 Footnote 30; a figure that I suspect did not include conceded cases.
34 Kelly's article commenced: 'The Federal Court does not come to today's decision over the Tampa with clean hands…'.
35 *MIMA v Yusuf* (2001) 206 CLR 323
36 Whereas prior to *Yusuf* decisions were reviewed for failing to record in the reasons a finding on a 'material question of fact' after *Yusuf* the failure to record the finding was a basis for inferring that it was not made and therefore the relevant tribunal did not compete its exercise of jurisdiction:
37 *R v Hickman*; *ex parte Fox* (1945) 70 CLR 598

38 By Act 134 of 2001.
39 *NAAV v MIMA* (2001) 123 FCR 298
40 *Plaintiff S157/2002 v the Commonwealth* (2002) 211 CLR 476
41 *Yusuf supra* (which was decided prior to *Plaintiff S157*); see *SAAP v MIMA* (2005) 79 ALJR 1009; *MIMA v SGLB* (2004) 207 ALR 12 at [35] to [57] (per Gummow and Hayne JJ).
42 An example being a contravention of sub-section 418(3) of the *Migration Act 1958* (Cth) is to be found in *Muin supra* at [21] (per Gleeson CJ) and at [46] (per Gaudron J)
43 *Plaintiff S157/2002 supra* at 509-510.
44 See the debate as summarised in *SZEEU v MIMA* (2006) 150 FCR 214

45 See for example *SZBEL v MIMA* (2006 81 ALJR 515 and *Applicant Veal of 2002 v MIMIA* (2005) 225 CLR 88.
46 *SAAP v MIMA* (2005) 79 ALJR 1009
47 *MIEA v Esheteu* (1999) 197 CLR 611
48 Between *S157* and *SZBEL*, Gaudron J retired in 2003 and McHugh J in 2005 and were replaced by Heydon J and Crennan J respectively.
49 Black CJ (appointed 1 January 1991), Beaumont J (appointed 30 May 1983), Wilcox J (appointed 11 May 1984), French J (appointed 25 November 1986) and Von Doussa J (appointed 1 December 1988).
50 See *Abebe supra* and an article by the author, (2000) 24 AIAL 32.
51 *McMillan* supra at footnote 1. The Federal Court's annual report for 2003 states that the number for that year was 941.
52 With effect from October 2001 the Federal Magistrates Court acquired a jurisdiction to undertake judicial review of migration decisions. According to its annual reports the number of such applications filed in that year and following years were: 2001/2002 : 182; 2002/2003 : 1397 (Annual Report for 2002/2003 at p. 20); 2003/2004: 3046; 2004/2005 2445; 2005/2006: 2429 (Annual report for 2005/2006 at p. 22).
For the Federal Court the number of applications filed was: 1997/98: 659; 1998/99: 941; 1999/2000: 967; 2000/2001: 1343; 2001/2002: 1381; (Federal Court annual report for 2002/2003; Appendix 7, figure 5.8); 2002/2003: 1836; (boosted by 637 remittals from the High Court); 2003/2004 : 2591; (boosted by 1716 remittals from the High Court); (Federal Court annual report for 2003/2004; Appendix 5, figure 5.8).
The combined totals for these years are: 1997/1998: 659; 1998/1999: 941; 1999/2000: 967; 2000/2001: 1343; 2001/2002: 1563; 2002/2003: 3233; 2003/2004: 5637;
53 See *Our Town FM Pty Ltd v Australian Broadcasting Tribunal* (1987) 16 FCR 465; *Dornan v Riordan* (1990) 24 FCR 564; *Rich Rivers Radio Pty Ltd v Australian Broadcasting Tribunal* (1989) 22 FCR 437
*Commonwealth v Pharmacy Guild of Australia* (1989) 91 ALR 65, cited in *Muralidharan v MIEA* (1996) 62 FCR 402.