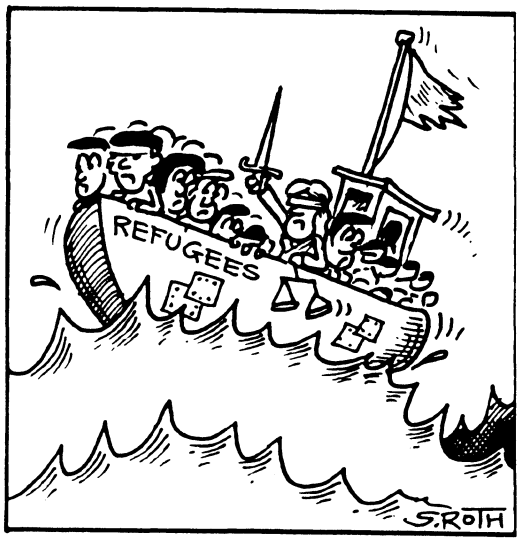
MIGRANT RIGHTS

Time to reassess

Arthi Patel

Ten years on: what has been achieved for migrants since the 1985 inquiry into human rights?



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> The legal status of non-citizens in a community is, along with the recognition accorded to the rights of prisoners, a useful indicator of the extent to which that community observes human rights.
>
> P. Bailey[1]

Migration decisions affect people in the most fundamental way, determining where they will live. As a group, people affected by migration decisions represent some of the least powerful members of our society, often having limited English, and limited understanding of the legal system. It can be argued that because of this vulnerability they should be afforded extensive legal protection against arbitrary actions of the state. However, their non-citizen status has afforded them lesser rights than citizens. The history of migration law in Australia is dominated by the exercise of unfettered state control,[2] with the notion of 'rights' for non-citizens being heavily circumscribed.

In 1985, following a string of complaints about migration decisions, the then Human Rights Commission (HRC) held an inquiry into human rights and the *Migration Act 1958*.[3] The report of the HRC inquiry highlighted a number of areas of concern including the treatment of people with disabilities, children and people illegally in Australia. It was particularly critical of decision-making procedures which at that time were highly discretionary and inconsistent, and of the fact that there was limited or no access to independent review.

The following treaties were identified as being breached to various degrees: the International Covenant on Civil and Political Rights (ICCPR), the Declaration on the Rights of the Child, the Declaration on the Rights of Disabled Persons, and the International Convention on the Elimination of all Forms of Racial Discrimination. Ten years down the track there have been dramatic changes to the system of regulating entry and presence in Australia of non-citizens. In 1989 a codified system came into place, which has been subject to continuing amendments. Much of the change has been driven by a desire to manage and control people who are illegally in Australia more effectively, as well as to improve and standardise decision-making procedures and reduce judicial intervention. Whether the present system is consistent with Australia's human rights obligations is unclear. This article considers the HRC Report, and legislative progress since that time, and points to areas of continuing concern.

Decision making

In 1985 the *Migration Act* was largely machinery legislation that allowed the Minister or her/his delegates to exercise discretion in decision making. Ministerial policy determined the broad directions of the migration program, while complex manuals were used by departmental officers to guide decision making. There was little public scrutiny of policy as changes were rarely publicly announced and manuals were not easily available. For example, each month workers at the Immigration Advice and Rights Centre (IARC) had to attend the

Freedom of Information Section of the Department of Immigration and Ethnic Affairs (DIEA) and comb through departmental manuals in order to establish whether any changes had been made. Many of the complaints to the HRC focused on inconsistency or bias in decision making. Despite the existence of guidelines, different officers exercised their discretion differently (HRC Report, para. 61). Limited types of decisions were subject to internal merits review on the papers, by Immigration Review Panels. The system appeared and was, in many instances, arbitrary. Increasing numbers of people sought the personal intervention of the Minister. The HRC found that the scheme breached the ICCPR by not affording all people equal protection under the law, and by expelling lawful aliens without adequate review (ICCPR Articles 26 and 13). The Commission recommended that there be legislative criteria for exercise of discretion, plus access to independent merits review to ensure consistent application of eligibility criteria.

In 1989 migration law was reformed in line with these recommendations. Policy was codified, with the criteria for visas and entry permits put into extensive regulations (Migration Regulations 1989). Departmental procedures were contained in a series of publicly available Procedures Advice Manuals (PAMs). A system of merits review by an independent tribunal was established. Virtually all discretions were removed. Judicial review continued to be available under the broad provisions for review contained in the *Administrative Decisions (Judicial Review) Act 1977* (Cth) *(AD(JR) Act)*.

The codified system continued to develop and change. Most significantly, in 1994 a code of procedure for dealing with applications was legislated, and access to merits review was broadened. While the codified system has provided more clarity, the removal of virtually all discretions means that many people in unusual circumstances not predicted by the regulations or with strong compassionate grounds cannot be considered as they do not meet strict visa criteria. People unlawfully in Australia must now be removed unless they can apply for a visa; no discretion can be exercised to consider their circumstances. This fundamental problem has major consequences in relation to the rights of children, families and people with disabilities.

While access to merits review was broadened, access to judicial review was severely circumscribed in 1994 with the removal of the application of the *AD(JR) Act*. People affected by migration decisions can no longer seek review in the Federal Court on the grounds of unreasonableness or natural justice. According to the Government, the code of procedure in the *Migration Act* embodies the principals of natural justice. However, in a number of ways the code falls short of the coverage in the *AD(JR) Act*.[4] The Federal Court provided a useful safety net to ensure decisions were made lawfully and fairly. In a number of instances the Court has been prepared to give weight to humanitarian considerations.[5] To remove migration from the scheme of judicial review for decisions made under other Commonwealth enactments signifies different treatment, without justification, for people affected by migration decisions.

The current system is also incredibly complex: the *Migration Act* contains over 500 sections; the Migration Regulations (1994) are over 600 pages; and there are four different versions of departmental procedures (PAM, PAM 2, PAM 3 and Migration Series Instructions). Although the material is publicly available, dramatic changes continue to be made with little or no public consultation. This is possible because regulations containing key functions can be amended without parliamentary debate.[6] Rapid change contributes to an ongoing perception that migration law is still subject to arbitrary state control. A better scheme would incorporate community consultation processes.

Children

The HRC Report was critical of the treatment of Australian citizen children whose parents were unlawfully in Australia (para. 68). At that time any child born in Australia automatically acquired Australian citizenship regardless of the immigration status of their parents. Thus many children with illegal parents had a right to remain while their parents were subject to deportation. Deportation of parents constituted forced departure of children legally entitled to remain. The outcome of this dilemma was the amendment of the *Australian Citizenship Act* (Cth) in 1986, such that only children born with an Australian citizen or permanent resident parent are Australian citizens.[7] The amendment assumes that children born in Australia, to unlawful parents acquire the nationality of their parents. However, in some instances prolonged absence of unlawful parents from their country of origin can result in loss of citizenship. Children born in Australia to parents who have lost their citizenship are stateless. A number of international treaties including the ICCPR (Article 24) and the Convention on the Rights of the Child (CROC) (Article 7) state that every child has a right to a nationality and citizenship legislation should be amended to reflect this.

The major issue today is the position of children who are born in Australia with one citizen or resident parent and one unlawful parent. These children are Australian citizens but their unlawful parent can be removed from Australia with *no* consideration being given to the interests or needs of the child (*Migration Act 1958*, s.198). These provisions breach CROC which requires that in actions undertaken by administrative or legislative authorities the best interests of the child should be a primary consideration, and that children should not be separated from their parents against their will unless it is in their best interests. A parent who has been unlawful for more than one year cannot be granted a visa in Australia. He or she must leave Australia, serve a re-entry ban (or seek a waiver) and then be sponsored to return. The children are often forced to leave also as there is no one left to care for them. The parent can apply for a parent or special need relative visa in order to return to Australia but children under 18 cannot be spon-

Mary

Mary is a Samoan national in Australia whose visa expired in 1993. In 1994 she had a child Jay whose father Tom is an Australian citizen. The relationship between Mary and Tom broke down in 1995. Mary is now Jay's sole carer and Tom has access rights. Mary was detected by the DIEA last month. As an unlawful she is subject to automatic detention and removal, unless she can apply for a visa to regularise her status. She is not eligible for an aged parent visa, or a special need relative visa as she has been unlawful for more than one year. There is no other visa available. She has to leave Australia and be sponsored to return as either a parent or special need relative. She will be subject to a three-year re-entry ban. Jay cannot conduct the sponsorship as he is under 18. An assurance of support, social security bond and Medicare levy must be provided before either visa can be granted.

sors and there are substantial financial obligations attached to both visas.

Conversely, there is no absolute right of a parent to sponsor a child who is under 18 for migration to Australia. Only 'dependent' children can be granted a visa. The concept of dependence requires a high level of continuing contact and support. Depending on the political stability of the country of origin, this type of contact may be difficult to maintain. Again this seems inconsistent with CROC in relation to a child's right to live with his or her parent/s.

Families

The ICCPR states that people have a right to live with their family and that right should be protected by the State (Articles 23, 2.2 and 2.3). The HRC Report noted that immigration policy was increasingly based on family reunion, and that a broad definition of family which reflects social reality should be adopted (para. 59). Social reality has been recognised to some extent with interdependency visas for long-term companions, and gay and lesbian partners of Australian citizens and permanent residents. There are visas for parents, aged dependent relatives and last relatives left outside Australia but strict formulas are used to establish eligibility. Decision makers have no discretion to grant a visa where the relative does not satisfy the formula, even if there are strong cultural and humanitarian considerations. For example, parents of citizens and residents can only be granted a visa if they pass the balance of family test. This purely numerical test requires a parent to show that either half their children are permanently in Australia or more children are in Australia than any other single country. No account can be taken of psychological or financial ties between the parent and sponsoring child, or the impact of cultural norms on the family structure.[8] Failure to take cultural norms into account may constitute indirect race discrimination. The Regulations appear to be racially neutral, but the impact is to prefer a particular type of family composition, with cultural differences being ignored. The strict application of the test appears contrary to the spirit of the ICCPR provisions.

The HRC Report noted that the need to demonstrate assurance of support created a very real barrier to family reunion, constituting a breach of the ICCPR (paras 96-99). The assurance of support has been reduced from ten to two years but it continues to represent a significant barrier, particularly to poorer applicants and sponsors. The assurance is a contract between a sponsor (usually) and the Australian Government stating that for two years after entry of the relative to Australia the assurer agrees to repay certain social security benefits received by the relative during that time. (The benefits to be repaid are job search, newstart, special benefit and widow, partner, parenting and youth training allowance.) The assurance of support can be requested for any of the family reunion visas, and for some visas it is a mandatory requirement. Where the assurance is mandatory, an up front payment of a social security bond ($3500) and Medicare levy ($891) must also be made before the visa can be issued. The social security bond is held in a bank account for two years. If the migrant relative receives a social security benefit covered by the assurance of support in the first two years in Australia, the money will be first recovered from the bond and then the assurer. If the migrant does not receive any benefits the bond is refunded at the end of the two years. The Medicare levy is a one-off non-refundable fee. Only sponsors who have an income above the health care card limit can be an assurer, thus excluding unemployed sponsors or low-income earners. There is no discretion to waive these requirements. Where an assurance is either requested or mandatory it must be provided or the visa will be refused.

The scheme has a significant impact on poorer Australian citizens and residents, in some cases preventing the sponsorship of immediate family such as spouses. People granted refugee status in Australia are placed in a particularly invidious situation. Many have been completely displaced from their families. For others, the only way to escape a home country is if the rest of the family is left behind. Despite obtaining refugee status in Australia, the family members left overseas have to be sponsored through the cumbersome and costly family migration program. With limited or no community around them the sponsors often have extraordinary difficulty meeting the financial requirements.

Reshmi

Reshmi is a Sri Lankan national who has been granted refugee status in Australia. She fled Sri Lanka after close family members were killed in a village massacre. After she has been in Australia for 18 months Reshmi discovers that her sister Sarojini also escaped the massacre and is living in Colombo on her own, with no family or other support, and is subject to constant sexual harassment. Sarojini is not eligible for a refugee or woman at risk visa as she is still in her home country. Reshmi nominates her for another humanitarian visa for Sri Lankans. This is refused as the processing officer determines that Sarojini is eligible to apply for another permanent visa, as she is Reshmi's last remaining relative. Reshmi sponsors her sister in this category. Sarojini satisfies the visa requirements, however an assurance of support must be provided along with payment of a social security bond ($3500) and Medicare levy ($891). Reshmi is learning English and has not been able to find work, she has few savings. She is not eligible to sign the assurance and cannot pay the fees. The visa is refused.

Health

All visa applicants must meet a health requirement. In 1985 applicants could be refused a visa if they had a disease/condition that was a danger to the Australian community or would require significant care or result in significant costs to the Australian community. The HRC Report was very critical of the conflation of public health concerns and disability. The Commission recommended that public health concerns be separated from disability and that disability per se should not be grounds for refusal of a visa (para. 107). The Declaration of the Rights of Disabled Persons prohibits discrimination on the grounds of disability (Article 10).

With the *Disability Discrimination Act 1992* (Cth) the Government took the rare step of enacting domestic legislation to enforce an international treaty. However, decision making by DIEA is specifically *exempted* from the operation of that Act.[9] The health requirement, now specified in the Migration Regulations (Schedule 4), continues to discriminate grossly against people with disabilities. Disability is still considered in the same light as diseases that pose a risk to public health, and is grounds per se for refusal of a visa. No consideration is given to the contribution a person with a disability can make to Australia, or the family support that may be provided to them. The Regulations go so far as to

specify that the assessing officer must consider only a person's *need* and *eligibility* for health care or community services, without regard to whether that person will *use* those services (Reg. 2.25B). The health requirement can be waived in some limited visa classes, if there is no *undue* cost or prejudice to access to heath care for Australians.

Where a family applies for migration, if any member of the family unit fails the health test the application for all members will be refused. The HRC Report was critical of this practice, noting that 'in family reunion cases the anguish which is caused by rejecting a family's application on the basis of one member's disability is considerable' (para. 110). There has been no change to this requirement.

Debbie

Debbie applies to come to Australia as the last remaining relative of her brother Marco who has been living in Australia for a number of years. Debbie's husband recently died and Marco wishes to support his sister and her three young children, who are his only close relatives. One of the children, Poppy, has Downs Syndrome and has been attending a special school in Greece. Debbie is the main visa applicant and the children are included as members of Debbie's family unit. The whole family's application is refused on the grounds that Poppy has a condition which will result in a significant cost to the Australian community in terms of health care or community services, and will prejudice access of an Australian citizen or permanent resident to community services. There is no provision for waiver of the health requirement in this visa class.

Unlawfuls

The HRC Report noted the difficult balance between recognising that people unlawfully in Australia have broken the law and are subject to sanctions contained in it and, on the other hand, recognising and respecting their basic human and legal rights (para. 50). The Commission stressed that rights of people illegally in Australia should be the same as the rights of other non-citizens, particularly in relation to protection of the family, protection of the child, the right to a fair trial, liberty and security of person, and the right not to be subjected to cruel and inhuman treatment. Despite significant changes to the system of control of unlawfuls, the balance continues to be tipped towards excessive control to the detriment of fundamental human rights.

The HRC Report was critical that people unlawfully in Australia had limited opportunity to regularise status, and were often deported despite significant family and other ties in Australia. The Commission urged that before an order for deportation was made certain matters relating to human rights, should be considered. These matters included the situation of the family, the degree of absorption into the Australian community, rights of children involved and cruel and inhuman treatment (para. 229). Rather than move towards recognition of these rights, migration legislation has gone in the opposite direction. Unlawfuls are automatically subject to detention and 'removal'[10] unless they can be granted a visa. There is no longer any *decision* to deport, and therefore limited scope for judicial review. Cronin writing before the implementation of the detention and removal scheme stated:

> The proposed provision is without legislative parallel. It reverses the common assumption that it is for the state to justify the decisions to deprive a person of his/her liberty.[11]

All visa criteria are codified and unlawfuls are subject to strict time requirements. People who have been unlawful for more than one year are prevented from being granted almost all visas, and no consideration can be given to family or other circumstances. Unlawfuls who have been refused a visa in Australia are prevented from making a second application, except in very limited circumstances *(Migration Act,* ss.48, 48A, 48B). There is no room for human rights in this tightly legislated scheme and people who don't fit neatly into the rules are left in extreme hardship (see Mary's case study).

The HRC Report stressed the entitlement of unlawfuls to appropriate legal advice when in detention. The *Migration Act* now provides that people in immigration detention, if they request, shall be afforded facilities for obtaining legal advice (s.256). This provision is limited in that it relies on the unlawful person making a request. The Act also provides that a detainee may apply for a visa, and should be told of the consequences of detention. A very significant exemption exists in relation to people who arrive in Australia without a visa. There are no obligations for DIEA to advise these 'unauthorised arrivals' whether they can apply for a visa, or to give them the opportunity to apply for a visa, or to allow access to legal assistance (s.193). It is difficult to see any justification for this exemption. Many unauthorised arrivals are in an extremely vulnerable position, having fled their home country without documentation for fear of their safety.

Unauthorised arrivals who do manage to apply for a visa (usually refugee status and a protection visa) must be held in detention while the application is considered (with some limited exceptions).[12] In some instances this can amount to a number of years, usually spent at the Immigration Detention Centre in Port Hedland. In contrast, people who arrive in Australia lawfully and subsequently become unlawful can remain in the community while their visa application is considered. Bail type provisions, in the form of bridging visas, were introduced in 1994 and have been operating very successfully. Where a decision to refuse a bridging visa results in detention, the refusal is subject to speedy, independent merits review in the IRT. The differential treatment of unauthorised arrivals has little justification and may constitute cruel and inhuman punishment. A complaint arguing breach of the ICCPR in relation to lengthy detention in Port Hedland is currently before the United Nations Human Rights Committee.[13]

The HRC Report considered the treatment and accommodation of people in detention was highly problematic, and inconsistent between various detention centres (para. 210). There has been a general improvement in facilities at detention centres but accommodation facilities are different in each State, and in some jurisdictions detainees continue to be held in the general prison system. This seems completely inappropriate treatment given that unlawfuls have not committed criminal offences but rather have breached administrative procedures.

Race discrimination

The Australian Government prides itself on having a non-discriminatory immigration policy. The criteria for visas are clearly listed in legislation and anyone, regardless of nationality is entitled to be granted a visa if they meet the criteria. The HRC Report raised a number of concerns about discrimi-

natory practices, such as disproportionate detection and deportation of certain ethnic groups, and inconsistent processing times at various oversees posts. Accurate information about the methods and targets for detection is difficult to obtain. There is clear evidence that the time taken to consider a visa application continues to vary significantly according to the place where the application is lodged. The table is a sample of the average processing times in various overseas posts for spouse (subclass 100) visas.[14]

Four slowest overseas posts		Four fastest overseas posts	
Jakarta	8.4 months	Osaka	1.3 months
Hanoi	10.6 months	Berne	1.9 months
Nairobi	9 months	Vancouver	1.6 months
Bangkok	8.2 months	Washington	2.1 months

Equitable staffing to reflect workload at overseas posts is a simple remedy for this ongoing discrimination.

Overall, migration law has moved away from determining eligibility according to nationality and race but the assessment of visitor visas has moved back to race-based decision making with the use of the 'risk factor'. The risk factor is present if a person has lodged an application for migration in the last five years or fits into a statistical profile of likely overstayers. Where the risk factor is present, an applicant must convince DIEA that there is very little likelihood of overstaying.

Roxanna and John

Roxanna is a 20-year-old Chilean woman. She applies for a visitor visa, providing evidence of her financial resources and a support letter from her aunt in Australia. The application is refused as she falls into a risk factor category — all Chilean women aged 20 and over are considered to have a high risk of overstaying.

John is a 20-year-old Englishman. He applies for a visitor visa, supplies evidence of his finances and is granted the visa. UK citizens are not considered to have a high risk of overstaying.

Impact of *Teoh*

The High Court in the *Teoh* case *(MIEA v Ah Hin Teoh* (1995) 128 ALR 353) found that ratification of an international treaty by the Australian Government gave rise to a legitimate expectation that treaty provisions would be considered by administrative decision makers. If the decision maker intends to depart from the treaty, the person affected should be given notice and an opportunity to respond. The decision has been met with a good deal of hysteria, and allegations that Australian sovereignty is under threat. However, the decision is in fact very limited. Decision makers do not have to follow treaty obligations, they only have to consider them. A legitimate expectation will only arise where there is no contrary domestic legislation.

Mr Teoh applied for a visa on the basis of his relationship with an Australian citizen, and their seven Australian children. The application, lodged before the codified system began, was refused on the grounds that Mr Teoh was not of good character as he had recently been convicted of drug importation. In the Federal and High Courts Mr Teoh successfully argued that he had a legitimate expectation that CROC would be considered by DIEA. The Convention provides that in decisions affecting children the best interest of the child shall be a primary consideration (Articles 3 and 9). DIEA made Mr Teoh's character a primary consideration. They failed to give Mr Teoh notice and an opportunity to respond to their departure from the treaty.

Teoh was based on the *Migration Act* before codification. The directions regarding character assessment were in policy only. In contrast, the character provisions are now in the *Migration Act* (s.501) and Regulations (Schedule 4) and the best interests of the child is not mentioned as a legislative criterion for any visa category. Codification simply excludes consideration of treaty rights such as those contained in CROC. Litigation as a tool for enforcing human rights is substantially limited. There are a few areas where the legislation does not clearly specify criteria to be taken into account, for example, human rights can be read into terms like 'compassionate and compelling circumstances' in relation to waiver of re-entry bans.

Conclusions

Just a few areas of human rights concern have been covered in this article. Many of the points raised in the HRC Report, such as refugee determination and sex discrimination have not been considered. Given the dramatic and fundamental changes to migration law in the last 10 years, and the ongoing human rights concerns which span the entire complex system, it seems timely for HREOC to take another look at migration. Following the *Teoh* decision the Government announced a review of Commonwealth administrative decision making, and there are strong arguments that DIEA should be the first department to be considered. Given the limitations of the *Teoh* decision, such a review may not go far enough. Legislative reform to allow for consideration of fundamental human rights in migration decisions is necessary. The pattern of reform in this area in the last ten years has been towards increasing legislative control, limiting the discretions of decision makers and preventing judicial interpretation. This is ironic given the increasing preparedness of the courts to give weight to international human rights obligations. Cronin has stated that the obsession with control and 'judge proofing' has gone too far: 'the mechanisms of control are complicated and inflexible, and at times overtly discriminatory', hard cases are avoided and human rights ignored to the detriment of the whole community.[15]

References

1. Bailey, P., *Human Rights: Australia in an International Context*, Butterworths, 1990, p.312.
2. The control analysis of Australian Migration was developed by Cronin, Kathryn, 'A Culture of Control: An Overview of Immigration Policy Making' in Jupp and Kabala (eds), *The Politics of Australian Immigration*, Bureau of Immigration Research, AGPS Canberra, 1993.
3. Human Rights Commission, 'Human Rights and the Migration Act 1958', HRC Report No. 13, AGPS, 1985.
4. For example, the code only applies to the Minister and her/his delegates. Other decision makers involved in the migration process, such as the Medical Officers of the Commonwealth are not bound by the code. See Goddard, J., 'What the Migration Reform Act Really Means', (1994) *Law Society Journal* March, p.33.

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protect the environment. New issues continue to emerge that warrant urgent legislative action. Recent legislation in the area has attempted to tackle coastal planning, Aboriginal heritage, land clearing, groundwater quality, biodiversity, endangered species, contaminated land and climate change.

An emerging feature of environmental law is the formalisation of a greater role for the public in strategic planning, actual decision making and the enforcement of the legislation. This has not been without resistance. In certain jurisdictions, such as New South Wales, the role of the public is well established. However, in other States, such as Victoria, recent amendments have seen the public's role limited and in some cases removed entirely. In other jurisdictions, the role of the public is *ad hoc* and dependent on the policy of the relevant decision-making authority and the nature of the issue.

With some notable exceptions, the potential role of the public in both the administration and enforcement of environmental and planning law has received scant academic analysis. Even more uncommon is a comparative analysis of international approaches to public interest environmental law. Indeed, books, monographs and major articles undertaking a comparative analysis of environmental and planning law are rare. While some international conferences examine various issues, they lack a rigorous approach to analysis, have a poor theoretical and philosophical understanding of subject matter and, too often, fail to provide a sense of where the law ought to be heading.

In part, this book seeks to address these deficiencies. *Public Interest Perspectives in Environmental Law* is, as the editors acknowledge, a random and incomplete introduction to the characteristics of public interest environmental law in countries from both hemispheres. It seeks to provide a 'public interest perspective' which the editors define as a perspective which seeks to vindicate causes, in particular, human and ecological interests, rather than advance the interests of government, property or capital. This perspective argues that no longer should government have an exclusive role in protecting the public interest. Rather, the complexity and importance of the task warrants a complementary role for the public. This role is to assist the government in upholding the public interest, stopping public nuisances and compelling the performance of public duties.

The book evolved from a conference held in London in October 1993. Essentially, it draws from experience and identifies ways in which the legal system can introduce into decision making a greater awareness of community and environment.

The book is organised into three sections, following the general format of the conference. The first examines international experiences and draws upon the knowledge and experience of various public interest lawyers from South Africa, India, Brazil, the European Community and the United States. The second part examines the position in the United Kingdom on the themes raised in the first part. Part 3 examines the appropriateness of a specialist environmental/planning tribunal or court, largely from the experience of Justice Stein of the New South Wales Land and Environment Court.

As with most conferences and edited conference proceedings, the chapters are of an uneven quality. Some chapters are simply outstanding, while others fail to offer insight or depth of understanding of the subject. In the former category, is the opening chapter by Robinson which details the history of the various public interest environmental law firms in the United States and their contributions in protecting the public interest. Another is a chapter by a South African advocate and lecturer, Francois de Bois, who examines the scope of the constitutional rights for access to environmental justice in the constitutions of South Africa and India. This chapter is particularly relevant for Australia given the refusal of the 1988 Constitutional Commission to consider including a new head of 'environment' power within s.51, the former Government's recent Access to Justice policy statement, and the recent review by the Australian Law Reform Commission of its 1985 findings on standing in public interest litigation. De Bois argues that the reservations concerning the procedural innovations adopted by Indian courts, and the rights granted by the interim South African constitution allowing greater access to the courts for environmental cases can be addressed by a comprehensive approach to the competing interests concerned. This requires a major commitment to environmental and planning legislation which provides for a significant role for the public. South African and Indian public interest lawyers can thus learn much from the Australian experience.

Part 2 of the book is concerned with the position in the United Kingdom and while this is interesting, it offers a more limited diet of ideas. Part 3 is important for it contains the wealth of experience and practical assistance the Land and Environment Court of New South Wales has provided in matters of public interest litigation for over 16 years. This is relevant for Victoria, Western Australia and the Territories which are yet to see the benefits of a superior court of record for all environmental, planning, building, valuation, compensation and rating matters.

In summary, this work is a timely and important contribution. It should be of interest to students, public interest groups, lawyers, community activists and government. With its comprehensive table of cases and legislation it should also provide an important reference for future work.

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5. For example, *Fuduche v MILGEA* (1993) 117 ALR 418; see Allars, M., 'One Small Step for Legal Doctrine, One Giant Leap Towards Integrity in Government: Teoh's Case and the Internationalisation of Administrative Law', (1995) 17 *Sydney Law Review* 204.
6. For a detailed discussion of the increased use of statutory rules and associated problems see, 'Rule Making by Commonwealth Agencies', ARC Report No.35, AGPS, 1992.
7. Section 10, though note s.10(b) provides that children born in Australia after August 1986, who reside here for 10 years will be citizens.
8. Duignan, J. and Staden, F., *Free and Independent Immigration Advice*, BIPR, 1995, p.49.
9. Section 52 *Disability Discrimination Act*. The only other exemptions are in relation to the defence forces, Australian Federal Police, and Telstra with respect to public phones.
10. Unlawfuls are no longer deported, but removed. The only determinations to be made before a person can be removed are that they are unlawful and any visa applications have been finally determined (*Migration Act*, s.198).
11. Cronin, above, ref. 2, p.102.
12. Unauthorised arrivals who are either under 18 or over 75 can be released on a bridging visa E Subclass 051, Schedule 2 Migration Regulations 1994. Unauthorised arrivals must be released if detention exceeds 273 days; however time taken for, among other things, matters outside the control of the DIEA is not counted (*Migration Act*, s.182(3)).
13. See Poynder, N., 'Marooned in Port Hedland', (1993) 18(6) *Alt.LJ* 272.
14. DIEA MPMS Data, Overseas Client Services Division, 24 November 1995.
15. Cronin, above, ref. 2, p.104.