The majority of the High Court considered that an employee must be able to perform the inherent requirements of a particular employment with reasonable safety to the individual concerned and to others with whom the individual will come in contact in the course of his employment. It was acknowledged that determining what is a 'reasonable' degree of risk to others in a context of training for participation in armed conflict will present difficult questions of judgment.

It was further noted by the High Court that an applicant for an order does not fail unless it is shown that a different result was inevitable. Showing that a different result might have been reached if there was no error of law made, may be sufficient reason to warrant making an order.

The appeal was dismissed as the High Court (4-2 majority) found the Full Court was right to set aside the decision of the Commissioner and remit the matter for further consideration by the Commission differently constituted.

Re the Minister for Immigration and Multicultural Affairs; Ex parte Durairajasingham
High Court of Australia, McHugh J, 21 January 2000
[2000] HCA 1

Refugee Review Tribunal decision refusing to grant protection visa—application in original jurisdiction of High Court for prerogative relief—whether Tribunal failed to take into account relevant considerations and evidence—whether Tribunal failed to consider all available inferences from evidence— whether s430(1) of Migration Act 1958 required Tribunal to refer to evidence contrary to its findings—role of the High Court under the Constitution

This was an application in the original jurisdiction of the High Court under s75(v) of the Constitution, for prerogative relief against the Minister for Immigration and Multicultural Affairs, the Refugee Review Tribunal (RRT), and the principal member of the RRT. It concerned an RRT decision affirming that Mr Durairajasingham ("the prosecutor") was not entitled to a protection visa. The RRT had not accepted several important assertions made by the prosecutor and his wife on which the case was based. The prosecutor sought orders nisi for a writ of prohibition directed to the Minister, a writ of certiorari directed to the RRT, and a writ of mandamus directed to the principal member of the RRT as well as an injunction against him.

In his judgment, McHugh J discussed the role of the High Court, referring to *Abebe v the Commonwealth* (1999) 73 ALJR 584 which held that the severe restriction of the jurisdiction of the Federal Court to review the legality of the decisions of the RRT could have significant consequences for the High Court because it would force applicants for refugee status to invoke its constitutionally entrenched s75(v) jurisdiction.

The Court noted that these cases (of which there were many pending) created for the Court a tension between the need to give preference to the applications of those in

custody and claiming refugee status, and the need to give preference to the Court's general constitutional and appellate jurisdiction.

McHugh J noted that the Federal Court was set up partly in recognition that the High Court could not act as a federal trial court and still have time to deal adequately with its constitutional and appellate jurisdiction. He added that although refugee matters do arise under the High Court's constitutionally entrenched jurisdiction, most of them were really administrative law matters in which the Federal Court had great expertise.

McHugh J considered that the High Court has no jurisdiction to grant certiorari in a s75(v) matter otherwise than as an incident of its accrued or expressly conferred jurisdiction, and therefore noted that unless the prosecutor could demonstrate entitlement to obtain an injunction, mandamus or prohibition against at least one or more of the respondents, the Court had no power to grant certiorari quashing the RRT's decision.

The Court found that the prosecutor had failed to make an arguable case for the grant of an order nisi and dismissed the application for relief.

The first and second grounds upon which relief was sought was that the RRT failed to take into account certain relevant considerations in aspects of its decision-making, but the Court found that there was no such failure.

The third ground was that the RRT failed to consider the cumulative effect of his claims and the evidence in support of them. The Court considered this to be in substance a quarrel with the overall finding of fact made by the Tribunal.

The Court found that the fourth ground was not established. It claimed that by finding the prosecutor's assertions "utterly implausible", the RRT formed the view that no other inference could reasonably be drawn on the facts as found, whereas other inferences were reasonably open and ought to have been considered. The Court found that the RRT took a definite view that the prosecutor's story was not to be believed and therefore did not have to consider whether its findings might be wrong.

The fifth ground alleged that the Tribunal erred in law in failing, contrary to s430(1)(c) of the *Migration Act 1958*, to set out findings on material questions of fact. The Court referred to the case of *Addo v Minister for Immigration and Multicultural Affairs* [1999] FCA 940 in which it was said that s430(1) does not impose an obligation to do anything more than to refer to the evidence on which the findings of fact are based, and noted that the RRT need not give a line-by-line refutation of the evidence for the claimant.

The sixth ground generally relied on earlier grounds and alleged that the RRT acted beyond jurisdiction, because the decision was so unreasonable that no reasonable Tribunal acting according to law could have come to such a decision. The Court rejected this ground for the same reasons as the earlier grounds and added that the

Tribunal was entitled to reject the claims made in the case and was not acting unreasonably by refusing to act on evidence such as a letter from Amnesty International. It was therefore unnecessary to go on to consider whether "Wednesbury unreasonableness" was a ground for the issue of writs of mandamus or prohibition or the grant of injunctive relief under s75(v) of the Constitution.

Vidovich v Mildura Rural City Council & Ors
Supreme Court of Victoria, Court of Appeal, 15 April 1999
(1999) VSCA 49

Natural Justice—Apprehended bias—Flexible principles depending on circumstances—Tribunal directions hearing held without notice to all parties—No reasonable apprehension of bias

The then Victorian AAT's Planning Division's convening of an ex parte directions hearing to have explained to it the layout of a plan and how it related to an earlier plan, was held by the Supreme Court not to give rise to a reasonable apprehension of bias.

The solicitor for the first respondent was asked by the AAT to attend to clarify some of the material relevant to the proceedings as it had some queries about the relationship between two plans. The second plan lacked a 'north' orientation and street names which might have assisted in orientation. The AAT wished to understand the plan so as to identify tenants who might be affected by the proceedings, on whom it intended copies of the application should be served.

Counsel for the second respondent later told the Tribunal his client was concerned that an ex parte hearing had been convened without notice to the other parties, and submitted that the AAT should disqualify itself from further hearing the proceedings, since there was a reasonable apprehension of bias. The AAT did not accede to this request. The second respondent appealed to the Supreme Court on a question of law.

The Court noted that the principles of natural justice are not to be found in a fixed body of rules to be applied inflexibly at all times and in all circumstances, and also noted that the circumstances were unusual in that the AAT asked a party to attend a hearing to enable it to better understand confused drawings; the solicitor for that party was alert to a possible problem; and there was early disclosure by the AAT to persons affected of what had taken place in their absence. The Court was therefore not persuaded that the AAT erred in concluding that it should not disqualify itself on the ground of reasonable apprehension of bias.