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When jurisdictional errors are not remedied: Refusal of constitutional relief on discretionary grounds – *Matthew Alderton*

Section 75(v) of the Constitution provides an “entrenched minimum provision of judicial review” by making it “constitutionally certain” that the High Court has jurisdiction capable of restraining officers of the Commonwealth from exceeding federal power. Notwithstanding the constitutional significance of s 75(v), it remains a matter of judicial discretion for the courts to decide whether to grant the available relief. This means that there are certain circumstances in which a court will refuse to grant relief even if it has accepted that a Commonwealth officer acted beyond power or failed to exercise the relevant power according to law. However, as the recent case law demonstrates, these circumstances are narrow and will only apply in exceptional cases. This article explores these issues and seeks to distil the principles that warrant the refusal of constitutional relief on discretionary grounds. 15

The benefit of law, the devil and the Jia litigation – *Alan Freckelton*

The High Court decision in *Minister for Immigration & Multicultural Affairs v Jia Legeng* (2001) 205 CLR 507 still resonates today. A seriously flawed Administrative Appeals Tribunal decision, finding Mr Jia to be of good character despite his conviction for rape in Australia, ended up in protracted litigation and resulted in serious adverse effects on the rule of law in immigration decision-making. This article examines the course of this litigation and argues that, despite the deeply unsympathetic nature of the applicant, the majority of the High Court was incorrect to find that the Minister’s decision was not affected by actual bias against Mr Jia. The decision in *Jia* has also led to increasing centralisation of decision-making power in the Minister personally, often without recourse to merits review, and this article argues that this negates the rule of law in such cases. 37

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