Taming the beast: Why a return to common law procedural fairness would help curb migration litigation – Alice Ashbolt

There has been an enormous increase in recent years in the number of applications made to Australian courts seeking reviews of migration decisions. This increase comes at a great cost and inconvenience to governments, and the inherent uncertainty it gives rise to is a burden to the courts, the applicants and their lawyers and advisers. This article examines the contributing factors that have led to this increase, and the efforts undertaken by governments and the courts to attempt to reduce the litigation. While there is some inevitability in the existence of migration litigation, the article argues that a return to common law procedural fairness rules would provide the most useful relief from some of the burdens and tensions that have arisen.

Due process, natural justice, Kable and organisational control legislation – Anthony Gray

On 25 September 2009, by a 2-1 majority the Supreme Court of South Australia invalidated part of the legislative attempt by the South Australian Parliament to criminalise association between groups as declared by that State’s Attorney-General. It is submitted in this article that the court was correct in doing so. Given that an appeal to the High Court has been filed against this decision, and the existence or planned existence of similar legislation in other Australian States, the article considers constitutional difficulties with this kind of legislation. In particular, the extent to which such legislation is consistent with the right to due process and natural justice will be considered, as well as the compatibility of such legislation with the so-called Kable principle.
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