



Perspectives on Declaratory Relief

Declaratory Relief Since the 1970s

The Hon Wayne Martin
Chief Justice of Western Australia

30 November 2007
University Club

Introduction

A conference focused on the grant of declaratory relief provides a timely opportunity to reflect upon the important role which the grant of such relief has played in improving the ability of the courts to provide a more comprehensive, flexible and less technical means by which parties can resolve disputes. The increased utilisation and availability of the declaratory remedy has increased access to justice. This is no small or insignificant achievement, given the constraints upon access to justice in contemporary Australia.

The need for the declaratory remedy

The primary function of the courts is to administer the rule of law, and through that means, promote law and order and discourage anarchy and oppression. On the civil side of the court's work, those functions are performed by providing a mechanism for the resolution of disputes between citizens, or between citizens and government. On the criminal side of the court's work, those functions are performed by determining guilt or innocence, when that is put in issue, and determining the penalty to be imposed in the event of guilt.

For a number of historical reasons, largely borne in the development of the common law system of justice, the courts have not been as effective as they might have been in performing these functions.

On the civil side of the court's work, the common law insisted that a party seeking relief from the court, bring his or her case within the scope of an existing and recognised cause of action. If the claim could not be brought within such a cause of action, it would not be recognised by the court, and the dispute giving rise to the claim would not be entertained or resolved.

Although the gradual development of the common law allowed new causes of action to be recognised over time, this was a slow and protracted process. Prospective litigants could not be confident that a court would recognise a novel formulation of a claim.

A second significant limitation upon the capacity of the courts to resolve disputes arose from the requirement that all the facts and events necessary to give rise to a cause of action must have occurred before the court would entertain the claim. Even if the occurrence of the necessary facts or events could be predicted, and even if the parties, not unreasonably, wished to resolve their dispute before those facts occurred - so that each knew where they stood and damage might be reduced or averted, the court was unable to provide any assistance to the resolution of the dispute. As we will see, the availability of a declaratory remedy overcomes these deficiencies.

Perhaps the most significant legal development in Australia over the last 20 years has been the exponential growth in the volume of litigation concerning disputes between citizens and government. Although much of that growth has occurred in the area of immigration law, it has by no means been limited to that field. The growth of government regulation of business and commerce, and every day life, and increasing enthusiasm for litigation as a means of achieving one's aims or objectives has resulted in a wave of litigation in the field of administrative law which is of tsunami-like proportions.

But the mechanisms and procedures provided by the courts for litigation in the field of administrative law were quite inadequate to deal with

contemporary issues in that field. The remedies available were largely confined to the prerogative writs - quaint remedies with Latin names which are difficult to pronounce, only obtainable through anachronistic processes and beset with technical rules and requirements (such as the requirement that an error of law appear on "the face of the record" for the purposes of the grant of *certiorari* - see *Craig v The State of South Australia* (1995) 184 CLR 163).

In the field of Commonwealth administrative law, many of these deficiencies were overcome by the passage of the *Administrative Decisions (Judicial Review) Act (1977)* (Cth). However, only some State jurisdictions have achieved similar reforms. And although the government of Western Australia has accepted a recommendation by the WA Law Reform Commission to reform the law in this area by adopting reforms modeled on the Commonwealth legislation, legislation to that effect has not yet been introduced.

The availability of the declaratory remedy has proven particularly useful in the field of administrative law - overcoming some of the deficiencies in the availability of a remedy by way of prerogative writ. A classic example of the utility of the remedy is provided by the decision in *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564. In that case, a person who had been denied procedural fairness by the Criminal Justice Commission of Queensland when it compiled a report which seriously damaged his reputation, was denied *mandamus* because the Commission was under no statutory duty to investigate and report, and was denied *certiorari* because no legal effect or consequence attached to the report. However, a declaration of failure to observe procedural

fairness was granted in order to fill the gap left by the technical rules limiting the availability of the prerogative remedies.

In the criminal side of the court's work, guilt or innocence cannot be determined until charges have been laid, and charges cannot be laid until an offence has allegedly been committed. But sometimes people wish to know in advance whether conduct which they are considering undertaking, will or will not constitute the commission of a criminal offence. While there are, of course, obvious dangers in anticipatory rulings based upon facts which may or may not occur, in some limited circumstances, the availability of such a ruling enhances the court's capacity to promote law and order, by enabling people to desist from conduct which would be unlawful.

In the area of criminal law there have also been long-standing constraints upon appellate review of decisions made in the course of running a criminal trial. Those constraints have been based upon the sound principle that interlocutory appeals might encourage fragmentation of the criminal process, protracting the ultimate resolution of guilt or innocence.

However, in some limited circumstances there are distinct practical advantages to be derived from an authoritative judicial determination as to the correctness of a decision taken in the course of running a criminal trial. In this area, the availability of a declaratory remedy has proven particularly useful in promoting and enhancing justice. One example of this utility is provided by the decision in *Biggs v DPP* (1997) 17 WAR 534. In that case, the forewoman of the jury had announced unanimous verdicts of not guilty. However, the trial judge later set aside the verdict of acquittal which she had entered following the announcement of those

verdicts, because of her discovery that they had not been unanimous. The accused was committed for retrial. He entered a plea that he could not be guilty on the retrial, because he had already been acquitted. Under the arrangements relating to appeals, the only way the correctness of that plea could be authoritatively determined would be after the retrial had been conducted, and a verdict entered. Proceedings were brought seeking a declaration that the accused was entitled to a directed verdict of acquittal on his plea. Although the Supreme Court recognised that it would only be appropriate for the Supreme Court to grant declaratory relief in respect of matters arising out the District Court's criminal jurisdiction in rare and exceptional circumstances, it was satisfied that this was such a case, and the relief was granted. Through that means, a futile retrial was avoided. Other examples of the utility of such a procedure in the criminal arena are given below.

So, the nature and growth of declaratory relief reflects and responds to the inadequacies of the alternative forms of relief. The availability of the declaration has enabled the courts to give remedies to persons who might otherwise have been denied relief. It has proven to be a vital adjunct to the court's processes. In the area of civil disputes, administrative law and criminal procedure, its utility and desirability has been demonstrated many times. More recently, it has also been utilised to bring issues with a significant public interest component before the courts. The utilization of the declaratory remedy in each of these areas will be considered in more detail below.

The development of declaratory relief

The history of the development of the declaratory remedy is to be covered in more detail by other speakers at this Conference. It is sufficient for my

purposes to note that although analogous remedies had been available in mainland Europe and Scotland since about the 16th century, during the 19th century, English Judges were bemoaning its non-availability. Cottenham LC made such a complaint in 1848 in the course of his decision in the curiously named case of *Grove v Bastard* (1848) 41 ER 1082. Unfortunately, it is not clear from the report which of the litigants had the unfortunate name, although some hint might be provided by the fact that the case concerned a will prepared by a solicitor, which left substantial benefits to him and his children to the exclusion of the testator's own family. After referring to the fact that the Courts of England do not have the power of the Courts of Scotland to settle questions by *declarator*, Cottenham LC went on to devise a procedural mechanism by which much the same result could be achieved.

However, history tells us that Lord Chancellor Cottenham's views as to the desirability of declaratory relief were not shared by other English Judges. The statutory changes that were made to provide the Courts of England with that remedy were construed narrowly.

That restrictive approach was also transported to the colonies. In *David Jones Ltd v Leventhal* (1927) 40 CLR 357, the High Court held that the Supreme Court of New South Wales had no jurisdiction to make a declaration of right, except as an ancillary relief in proceedings for substantive equitable relief or relating to equitable rights or titles. The same view was taken in *Langman v Handover* (1929) 43 CLR 334. And despite the fact that earlier legislation in New South Wales might have been readily construed as conferring ample jurisdiction to grant declaratory relief independent of any substantive claim, it wasn't until

even more express legislation was passed in 1965 that the Courts of New South Wales embraced that jurisdiction.

Perhaps the most significant judicial endorsement of the utilisation of declaratory relief was provided by the High Court in *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421. In that case, the High Court confirmed the jurisdiction of the Supreme Court of New South Wales to grant declaratory relief in relation to the term and validity of an exploration licence granted under the *Mining Act* of New South Wales, even though no substantive equitable title or ancillary equitable relief was sought. And, perhaps at least as significantly, on the subject of discretion, the High Court confirmed that the jurisdiction was properly exercised in that case, notwithstanding that:

- (a) there was a "no *certiorari*" provision in the *Mining Act* of New South Wales; and
- (b) a specialist Tribunal created by the *Mining Act* - namely, the Mining Warden, had jurisdiction to determine the validity and currency of the exploration licence.

The High Court's decision supports the proposition that the availability of an alternative remedy, even from a specialist Tribunal, will not of itself preclude the discretionary grant of such relief, and nor will the fact that the grant of relief might be seen as inconsistent with a legislative desire to constrain judicial review (see also *AWB Ltd v Cole (No 2)* [2006] FCA 913; (2006) 233 ALR 453 on the subject of availability of alternative relief).

The historical controversy relating to the extent to which declaratory relief could or should be granted independent of substantive relief was

matched by historical controversy as to the source of the jurisdiction. The High Court has now pronounced that the jurisdiction derives from the inherent power of superior courts (*Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 581). And the historical debate concerning the characterisation of the remedy as an equitable remedy has also been apparently resolved by declaring that view to be "a common misconception" (per Young J in *AWB Ltd v Cole (No 2)* [2006] FCA 913; (2006) 233 ALR 453, at 463 [45]) - see also *Tito v Waddell (No 2)* [1977] Ch 106, 259. However, the characterisation of the remedy as a statutory remedy in those cases which deny its equitable origins, appears inconsistent with the High Court's characterisation of the power as deriving from the inherent jurisdiction of a superior court. But I understand these interesting issues are to be addressed in rather more detail by other speakers at this Conference, and I will happily leave the controversy to them.

All Australian courts have now embraced the flexibility and utility of the declaratory remedy. A computer search for the year 2006 of Australia's Supreme and Federal Courts produces 380 cases in which the phrase "declaratory relief" is used.

The availability of the remedy

The standard texts relating to the remedy are replete with assertions as to the breadth of the jurisdiction available to the court to grant declaratory relief. Meagher, Heydon and Leeming assert that "the only real limitation on the court's jurisdiction to make declarations arises where a statute expressly, or by necessary implication, ousts the court's jurisdiction" (*Meagher, Gummow and Lehane's Equity: Doctrines and Remedies*, (2002) 4th ed, (19-105), 624).

Subject to an express (or implied) statutory ouster of jurisdiction, the major constraints upon the grant of declaratory relief are discretionary. Again, I understand that this subject is to be addressed in more detail by other speakers at this Conference. It is sufficient for my purposes to utilise the convenient summary of the grounds upon which relief might be denied in the exercise of discretion provided by Lockhart J in *Aussie Airlines Pty Ltd v Australian Airlines Ltd* (1996) 139 ALR 663 at 670 - 671:

- The proceeding must involve the determination of a question that is not abstract or hypothetical. There must be a real question involved, and the declaratory relief must be directed to the determination of legal controversies. The answer to the question must produce some real consequences for the parties.
- The applicant for declaratory relief will not have sufficient status if relief is 'claimed in relation to circumstances that (have) not occurred and might never happen,' or if the court's declaration will produce no foreseeable consequences for the parties.
- The party seeking declaratory relief must have a real interest to raise it.
- Generally there must be a proper contradictor." (citations omitted)

Civil disputes

I have already mentioned some of the advantages flowing from the availability of declaratory relief in the area of civil disputes. Those advantages are both substantive and procedural. *Field v NSW Greyhound Breeders, Owners and Trainers Association Ltd* [1972] 2 NSWLR 948 provides an example of the way in which declaratory relief can overcome limitations in the substantive law. Mr Field was a bookmaker who fielded bets at Harold Park Raceway. Dog races were conducted at that track by a voluntary association. Mr Field was not a member of the association. Following an incident at the track, the stewards disqualified Mr Field for life. The rules under which he was disqualified formed part of a contract between the association and its members. But Mr Field was not a member and therefore not a party to the contract. He therefore had no contractual right to enforce the rules. Street J held that it was an appropriate case for the grant of declaratory relief, and issued a declaration that Mr Field's disqualification was unlawful and invalid. Had that remedy not been available, Mr Field would have unlawfully lost his livelihood without avenue for redress.

An example of the procedural advantages which can be derived from the ready availability of declaratory relief can be found in *Perpetual Trustees WA Ltd v Goyder* (1999), unreported; SCt of WA; Library No 990138; 24 March 1999 (which I decided as a Commissioner). In that case, the executor of an estate sought directions pursuant to s 92 of the *Trustees Act 1962* (WA). However, at the hearing, it became clear that the real dispute was whether or not a particular asset formed part of the estate. There was therefore a real doubt as to whether an issue of that kind could be resolved on a trustee's summons for directions. All parties agreed that the proceedings should be treated as if they were proceedings for

declaratory relief dealing with the substantive question of whether the asset formed part of the deceased estate. Through this means, technical jurisdictional issues were avoided.

The declaratory remedy offers significant procedural advantages in the context of contemporary case management. Consistently with contemporary approaches to expeditious dispute resolution, the traditional reluctance of the courts to the determination of preliminary issues has diminished. Increasingly, case managers are looking for procedures by which cases can be brought to a speedy conclusion to the benefit of all. The flexibility of declaratory relief provides case managers with significant opportunities for identifying specific issues which can be resolved following a short trial, thus averting the need to resolve other much more complex and convoluted issues in what may be complex and multi-faceted litigation.

Administrative law

The substantive, technical and procedural deficiencies in the prerogative remedies have led to substantial legislative reforms in a number of jurisdictions. It is to be hoped that those reforms will occur in Western Australia in the near future. If and when they occur, the need to utilise the declaratory remedy will be substantially reduced. In the meantime, however, the procedural disadvantages of the prerogative writs (which include limitations upon the availability of discovery, the need to adduce evidence on affidavit, the need for a preliminary judicial review of the merits of the application, etc) and the substantive constraints - such as those deriving from the need to establish error of law on the face of the record for the purposes of *certiorari*, will continue to promote the extensive use of the declaratory remedy in the field of administrative law.

Criminal law

As I have already mentioned, there are numerous judicial pronouncements on the subject of the undesirability of providing opportunities for the fragmentation of criminal proceedings. An example of those observations is found in the reasons of Mason J in *Sankey v Whitlam* (1978) 142 CLR 1, at 81 - 82. However, *Sankey's case* established that in rare and exceptional circumstances, declaratory relief could and would be granted in relation to issues that had arisen in the course of committal proceedings. In that particular case, declaratory relief was granted in respect of the extent to which documents which a party sought to compel to be produced in the course of committal proceedings were the subject of what used to be called "Crown privilege" and is now called "public interest immunity".

Although there are obvious disadvantages in courts expressing views on the subject of criminal liability on the basis of hypothetical assumptions as to the facts, or in respect of events which have not occurred, there are circumstances in which advance determination of the lawfulness of conduct can provide significant practical advantages. These advantages were identified by Brennan J in *Re Trade Practices Act 1974* (1978) 19 ALR 191 (at 208):

"The availability of declaratory relief in cases where the relevant facts have not yet occurred provides an inhibition against the commission of illegal acts in some instances, and an assurance of freedom from prosecution in others. Where a statute is drawn ... in general terms so that the application of a proscription to a proposed course of conduct is not clearly ascertainable, a remedy by way of declaration is particularly apposite to avoid the dilemma of

abstaining from the conduct proposed or incurring the risk of proceedings to exact a penalty."

However, this cannot be taken too far. In *Bond v Sulan* (1990) 26 FCR 580, Mr Bond sought declaratory relief in relation to the conduct of an investigation directed at ascertaining whether or not he had committed criminal offences. In particular, he sought a declaration to the effect that he had a right to be heard by the Inspector in respect of any conclusions or inferences adverse to him before the Inspector's report was delivered. Gummow J refused to make the declarations sought because, in his view, the relief sought amounted to a conclusion upon a hypothetical or assumed state of facts which had not occurred, and which might not occur. Because there were various possibilities and contingencies in which questions relating to Mr Bond's right to be heard might arise, his Honour considered the grant of relief in the terms sought would be largely futile. Other grounds for refusing relief included the failure of Mr Bond to establish the likelihood of the Inspector failing to comply with his legal responsibilities. In the same case, Gummow J observed that a declaration is a final and not an interlocutory remedy, but, in a real sense, in that case Mr Bond was seeking to utilise the declaratory relief for interlocutory purposes.

A series of cases from Victoria in the mid 1990s illustrate the utility of the declaratory remedy in the context of criminal proceedings. In *Rozenes v Beljajev* [1995] 1 VR 533, the Victorian and Commonwealth Directors of Public Prosecutions applied for *certiorari* and declaratory relief challenging a ruling of a Judge of the County Court of Victoria prior to the taking of any evidence in what was to be a lengthy trial in a drug case excluding the evidence of a prosecution witness who was an

accomplice of the accused. The trial judge took that course because of the adverse view he had formed in respect of the witness's credibility as a result of him being an accomplice, his general bad character, and the existence of motives to implicate others (in the form of an indemnity he had been given by the prosecution in relation to evidence he gave during the course of the pending trial). The Court of Appeal concluded that the ruling was erroneous - the determination of the credibility of prosecution witnesses was, after all, a matter for the jury, not the trial judge. The question then arose as to whether and, if so, what relief should be granted. There were several technical hurdles in the path of a grant of *certiorari*, including the proper construction of sections of the *County Court Act (Vic)*, what constituted the record, for the purposes of error of law, and so on. The court avoided resolving those complex questions by deciding that declaratory relief would be appropriate. It was acknowledged that a ruling in respect of the admissibility of evidence, in the normal course of the conduct of a criminal trial, would not normally attract intervention by way of declaratory relief. However, their Honours considered the circumstances to be exceptional - namely, a ruling in advance of a long trial, before any evidence had been called, which was very likely to impact significantly on the conduct of that trial and which, in their view, was plainly erroneous.

It seems that the trial judge in the County Court was not intimidated by having been the subject of the grant of declaratory relief. The following year, it was necessary for both Directors of Public Prosecutions to again seek declaratory relief in respect of his conduct of the same trial - this time, as a result of his refusal to disqualify himself on the basis of apprehended bias (*Rozenes v Judge Kelly* [1996] 1 VR 320). During the second set of proceedings in the Court of Appeal, Mr Rozenes, the

Commonwealth Director, submitted that the trial process had gone out of control and that the relationship between the prosecution and the Judge had completely broken down. The Court of Appeal concluded that a fair-minded lay observer would have concluded that the trial judge might not bring an impartial mind to bear upon the case, and declared that the trial judge was disqualified from further presiding over the trial.

The following year, in *DPP v Judge Lewis* [1997] 1 VR 391, prerogative and declaratory relief was sought challenging an order by a County Court Judge permanently staying criminal proceedings, on the ground that he considered that the accused had been denied procedural fairness and that evidence might be adduced which would be unfair to the accused. The Court of Appeal granted a declaration that there was no latent ambiguity or duplicity in the indictment, and that the application for a permanent stay should have been refused.

In doing so, however, perhaps motivated by a concern that it was encouraging a new species of criminal interlocutory appeal, the Court observed that a declaration designed to regulate criminal proceedings is very much the exception and not the rule, and will ordinarily be refused unless there is a special justification for making it. The justification which sustained the order in that case was because the stay depended not upon matters of fact or discretion, but upon an erroneous application of law, because the Crown had no other avenue of appeal, and because of the public interest in bringing the offences to trial.

Declaratory relief has been granted in Western Australia in relation to aspects of criminal process. For example, in *McLachlan v August* (1996) 16 WAR 75, Malcolm CJ granted a declaration to the effect that

documents which had been seized during the execution of a search warrant at the office of the plaintiff's solicitors were the subject of legal professional privilege and that the police who had seized them were not entitled to have access to them.

However, there have been other instances in which the court has declined to grant declaratory relief in connection with the criminal process. For example, in *R (Rusbridger) v Attorney General* [2003] UKHL 38; (2003) 3 All ER 784, the House of Lords refused to grant the editor of the *Guardian* newspaper a declaration that publication of articles promoting a republican form of government in the United Kingdom would not constitute the offence of treason. It did so because it considered the prospect of prosecution was so remote that there was no genuine dispute concerning the subject matter. However, in the course of its judgment, the House of Lords confirmed that there will be exceptional cases in which declaratory relief could be granted to the effect that conduct which is proposed is not unlawful.

Significant public interest cases

Applications for declaratory relief have also provided a popular means for the litigation of contentious issues having a significant public interest component. Some cases decided over the last 2 years will illustrate this proposition.

In *AB v Attorney General* [2005] VSC 180; (2005) 12 VR 485 a woman sought a declaration that provisions of the *Infertility Treatment Act 1995* (Vic) did not prohibit her impregnation with an embryo; formed utilising frozen sperm removed from her late husband's body following his accidental death. The sperm had been removed by an order of the court.

In the proceedings for declaratory relief, it was concluded that the order for removal of the sperm was unlawful. However, the sperm having been removed and frozen, the court concluded that the previous error in respect of the order for removal should not preclude the grant of declaratory relief allowing its use. Accordingly, a declaration to that effect was made.

In *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2005] FCA 664, the Humane Society sought, in the Federal Court of Australia, a declaration that the respondent Japanese company unlawfully killed Minke whales in the Australian whale sanctuary adjacent to the Australian Antarctic Territory. Allsop J refused to grant leave to serve the proceedings outside the jurisdiction, on a number of grounds, including that they were likely to be futile given the unenforceability of the declaratory and injunctive relief sought. By majority in the Full Court of the Federal Court of Australia in *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2006] FCAFC 116; (2006) 154 FCR 425; (2006) 232 ALR 478, that decision was set aside, and leave was granted to serve the proceedings. In the course of his dissenting reasons, Moore J observed (at [47]):

"It may be accepted that in litigation not intended to enforce private rights but which has a public dimension (such as enforcing a norm of conduct established by statute for the protection of the public interest), an unduly narrow view has not been adopted about the circumstances in which a bare declaration might be made..."

However, his Honour observed that the cases supporting that proposition all involved litigation between Australian resident parties.

In *AWB Ltd v Cole (No 2)* [2006] FCA 913; (2006) 233 ALR 453, Young J was invited to determine, by way of the grant of declaration, whether documents which were produced to a Royal Commission were the subject of legal professional privilege. It was argued that the appropriate course was to allow the Royal Commissioner to determine the issue, under a particular provision of the *Royal Commissions Act* which permitted that course. Young J concluded that, notwithstanding the availability of an alternative remedy, there were good reasons for resolving the question of privilege in a court, rather than in the Royal Commission.

In *Rush v Commissioner of Police* [2006] FCA 12; (2006) 150 FCR 165; (2006) 229 ALR 383, some members of the group known as the "Bali Nine" sought orders for preliminary discovery in aid of prospective proceedings for declaratory relief against members of the Australian Federal Police. In essence, they wished to assert that the police had acted improperly by lending assistance to Indonesian authorities in such a way as would lead to their exposure to the death penalty, at a time when the law and policy in Australia was opposed to the imposition of such a penalty. After concluding that there was no reasonable prospect of arguing that the actions of the police officers were invalid or unlawful, Finn J refused preliminary discovery.

In *Hicks v Ruddock* [2007] FCA 299; (2007) 156 FCR 574, David Hicks, who was detained at Guantanamo Bay in Cuba without charges being laid for more than 5 years, sought declarations to the effect that the Attorney General of Australia had taken into account irrelevant considerations and was motivated by improper purposes in deciding not to seek the repatriation of Mr Hicks from Cuba. The Attorney General moved to

strike out the proceedings, on the basis that they had no reasonable prospect of success. Tamberlin J concluded that the imprisonment of Mr Hicks for over 5 years without valid charges was such a fundamental contravention of basic principle, as to give rise to an exceptional case which might arguably justify judicial intervention. He acknowledged that the extent to which the courts would examine executive action in the area of foreign relations was complex, and far from settled. However, in that context, he did not think it appropriate to dismiss the proceedings summarily, but rather that they should be allowed to proceed to trial. In fact, of course, the case was later resolved another way, and the interesting issues raised by the case were never determined.

Summary

The architects of the common law of Australia displayed an historical enthusiasm for technicality, rigidity and, occasionally, a preference for the triumph of form over substance. The rigidity and inflexibility of the law which they developed limited its capacity to serve its basic function of resolving disputes and promoting the enforcement of law and order. More recently, the development of the flexible and discretionary remedy of granting a declaration of right has overcome many of the deficiencies of a more traditional legal approach. Although the most significant utility of the remedy has been displayed in the resolution of civil disputes, in administrative law, and in limited and exceptional cases, in the area of criminal law and process, and more recently in cases of significant public interest which test the borders of justiciability, its potential utility is unlimited. The readiness of the courts to accept the availability of the remedy in a wide range of circumstances makes it highly likely that increasing reliance will be placed upon the remedy, to the exclusion of more traditional causes of action.