MINISTER FOR IMMIGRATION ATTACKS FEDERAL COURT
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The Minister for Immigration, Mr Ruddock, is fond of referring to "the separation of powers". But his recent attacks on the Federal Court suggest that he has little real idea what the term means.

Under the Constitution, the judicial arm of government is separate from, and independent of, both the legislative and executive arms. And for good reason.

The judicial arm of government is both the foundation-stone and the guardian of the rule of law. The legislature makes the laws and the executive implements them, but it is the unique function of the judiciary –

- to interpret and apply the laws made by Parliament, and to ensure their compliance with the Constitution; and

- to review the conduct of the executive arm (Ministers, public servants and tribunals) to ensure compliance with the law.

The *Tampa* litigation last year was an example of the second of these, judicial review of executive action. The fact that two of the four Federal Court judges concluded that the Federal Government had acted unlawfully can hardly have endeared the Court to the Ministers concerned!

Viewed objectively, however, the Federal Court's role in that litigation demonstrated how important it is to have an independent judiciary diligently performing its constitutional function. The Court sat day and night so that a powerless and unpopular group of asylum-seekers, who were *in extremis*, could argue their case that the Government's treatment of them was unlawful.

The current fracas arises only because the Federal Court has, once again, been doing its job. Over recent years, the Parliament has sought to limit, but not exclude, the Court's

ability to review administrative decisions in migration matters. The question which has inevitably – and repeatedly - arisen is how those words of limitation are to be interpreted.

One of the fundamental principles of statutory interpretation, developed over decades, is that laws which curtail basic common law rights should be construed strictly, so that the infringement of those rights is no greater than absolutely necessary. At stake in these cases is the right of every person to have government decisions affecting them made lawfully and in accordance with the requirements of procedural fairness.

In Court yesterday the Minister (through his counsel) restated his view that the "trend" of recent migration decisions represented an attempt by the Federal Court to "deal itself back into the review game." Such language is not only offensive to the judges concerned but it betrays the Minister's complete misunderstanding of the judicial function.

Unfortunately, Mr Ruddock's assault on the Federal Court is only the most recent chapter in a sorry history of attacks on the judiciary by representatives of the Coalition Government.

Who could forget Mr Fischer lashing out at the High Court after its decision in the *Wik* native title case? Or the failure of the Prime Minister to apologise to Justice Kirby, and the High Court, for the deplorable attack by Senator Heffernan in which Mr Howard tacitly acquiesced?

The Attorney-General, Mr Williams, has continued to resist calls for him to come to the defence of the Courts. But it is no less than his duty, as first law officer of the Crown, to do so. Mr Williams says he has privately counselled some of his ministerial colleagues on the subject, but evidently to no effect.

Maintaining the separation of powers is vital to the health of our democracy. Attacks by Ministers on judges diminish both the executive and the judiciary, and the Australian community is the loser.

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