



Australian  
Human Rights  
Commission

Parker v  
Commonwealth  
(DIAC)

[2013] AusHRC 68

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## **Parker v Commonwealth (Department of Immigration and Citizenship)**

Report into detention not in  
accordance with law, freedom from  
performing forced or compulsory  
labour and freedom from interference  
with the family

[2013] AusHRC 68

**Australian Human Rights Commission 2013**



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Human Rights  
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**Australian  
Human Rights  
Commission**

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1 November 2013

Senator the Hon. George Brandis QC  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I have completed my report pursuant to s 11(1)(f)(ii) of the *Australian Human Rights Commission Act 1986* (Cth) into the complaint made by Mr Troy Parker.

I find that Mr Parker's detention by the Commonwealth from 30 April 2004 until 31 October 2004 was inconsistent with or contrary to the procedures established by law within the meaning of article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

I do not find that the Commonwealth required Mr Parker to perform forced or compulsory labour within the meaning of article 8(3)(a) of the ICCPR. I also do not find that Mr Parker's detention interfered with his family within the meaning of articles 17(1) or 23(1) of the ICCPR.

By letter dated 13 September 2013, Mr Martin Bowles, Secretary of the Department of Immigration and Citizenship, provided a response to my findings and recommendations. I set out his response below.

The Department respectfully disagrees with the Commission's findings and recommendations.

With respect to the view that the Commonwealth acted inconsistently with or contrary to the procedures established by law within the meaning of Article 9(1) of the ICCPR, the Department maintains that, at the time Mr Parker was detained, Departmental officers had a "reasonable suspicion" that Mr Parker was an unlawful non-citizen. Under subsection 189(1), it is the *reasonable suspicion* that a person is unlawful that grounds the power to detain, not the actual fact that the person was unlawful.

Accordingly, the Department continues to rely on its previous submission dated 11 April 2013 that, as the detention of Mr Parker was in accordance with the relevant provisions of the *Migration Act 1958*, there has been no breach of Article 9(1). As such, there is no basis for the payment of compensation or provision of a formal apology and therefore, there will be no action taken with regard to this recommendation.

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With respect to your recommendation that training be provided to Departmental officers, the Department submits that there is existing training for Departmental officers to ensure detention powers are exercised appropriately and tools to ensure that notices given to clients are not defective. Under policy, the Department has restricted the use of section 189 detention powers to appropriately trained Compliance Status Resolution (CSR) Officers – officers who hold a Certificate IV in Government (Statutory Compliance), to mitigate the risk of clients being unlawfully or inappropriately subjected to ongoing immigration detention. The training for this qualification comprehensively covers issues of identity, immigration status and notification, which are three of the highest risk areas with regard to unlawful or inappropriate detention. The Department also provides ongoing refresher training in the application of detention powers to ensure that officers maintain current knowledge of policies and procedures.

Officers undertake notification assessments prior to either detaining a client or granting an initial Bridging E (Class WE) visa. These assessments assist officers to review and detect any defects that might exist in notifications previously given to the client that might have affected the client's immigration status. In carrying out these assessments, officers utilise specific assessment tools that have been developed to assist them – the Brief Assessment Tool and the Comprehensive Assessment Tool. Notifications are assessed in Departmental systems, and, where necessary, on physical files. An accurate determination can then be made as to whether or not a client has been affected at any point by defective notification, and whether there is any resultant effect on immigration status. In addition to notification assessments undertaken prior to location or detention, a Comprehensive Assessment is also undertaken by the Detention Review Manager (DRM) post-detention to ascertain that the client's ongoing detention is lawful.

In both the CSR and DRM networks the Department provides dedicated training sessions, on an ongoing basis, on the use of the tools and associated policy. In addition, the Notification Module in the CSR Skills course, which forms part of the Certificate IV in Government (Statutory Compliance), provides specific training on the notification tools and the importance of utilising all available sources of information to assist in determining a client's immigration status prior to any detention action. Officers are also required to undertake a post-training assessment to gauge their understanding of notification issues and ability to properly conduct a notification assessment using the Comprehensive Assessment Tool. There are also facilities within the Department to seek further advice on notification issues, if required.

Please find enclosed a copy of my report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gillian Triggs', with a long horizontal flourish extending to the left.

Gillian Triggs  
**President**  
Australian Human Rights Commission

# 1 Introduction

1. This is a report setting out the findings of the Australian Human Rights Commission and the reasons for those findings following an inquiry by the Commission into a complaint lodged by Mr Troy Parker that his treatment by the Commonwealth of Australia involved acts or practices inconsistent with or contrary to human rights.

## 2 Summary of findings and recommendations

2. I find that Mr Parker's detention by the Commonwealth from 30 April 2004 until 31 October 2004 was inconsistent with or contrary to the procedures established by law within the meaning of article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR).
3. I do not find that the Commonwealth required Mr Parker to perform forced or compulsory labour within the meaning of article 8(3)(a) of the ICCPR.
4. I do not find that Mr Parker's detention interfered with his family within the meaning of articles 17(1) or 23(1) of the ICCPR.
5. In light of my findings regarding the acts or practices of the Commonwealth I make the following recommendations:
  - that the Commonwealth pay financial compensation to Mr Parker in the amount of \$100 000;
  - that the Commonwealth provide a formal written apology to Mr Parker for the breach of his rights under article 9(1) of the ICCPR; and
  - that the Commonwealth conduct training for officers as outlined in section 7.5 of this report.

## 3 The complaint by Mr Parker

### 3.1 Background

6. On 29 July 2010 Mr Parker lodged a complaint with the Commission. The Commission deferred its inquiry for a period whilst Mr Parker pursued common law proceedings. Mr Parker and the Commonwealth have had the opportunity to respond to my preliminary view dated 22 March 2013.

## 4 Findings of fact

7. Mr Parker is a national of Zimbabwe and was married to an Australian citizen. Mr Parker and his now ex-wife have two children who were born in Zimbabwe in 1998 and 1999.
8. In 1999 Mr Parker and his then wife entered Australia. On or about 28 January 2000 Mr Parker applied for a permanent Spouse visa. In connection with that application he was granted a Bridging visa which was to remain in force whilst his application for a Spouse visa was pending.
9. In April 2001 Mr Parker and his wife separated. In December 2001 Mr Parker's wife advised the department now known as the Department of Immigration and Citizenship (the Department) that she and Mr Parker had separated in April 2001.
10. In or about late January 2002 the Department wrote to Mr Parker and advised him that his application for a permanent Spouse visa had been refused. This letter was undated. This letter also advised Mr Parker that his Bridging visa (the first Bridging visa) remained in force until 13 March 2002.
11. On 22 March 2002 Mr Parker applied for a Protection visa and a Bridging visa. Mr Parker was granted a further Bridging visa (the second Bridging visa).
12. On 25 August 2003 Mr Parker's application for a Protection visa was refused. The effect of refusal of the Protection visa application was to cancel the second Bridging visa and grant another Bridging visa (the third Bridging visa).
13. The third Bridging visa required that Mr Parker leave Australia 28 days after notification of the decision on his Protection visa application or, if he sought judicial review of the decision to refuse to grant him a Protection visa, 28 days after receiving a decision on the review application.
14. Mr Parker claimed that he did not receive the letter advising him that his application for a Protection visa had been refused or that he had been granted a Bridging visa which expired in September 2003.
15. In April 2004 Mr Parker was asked to attend the Perth office of the Department. On 30 April 2004 the Department informed Mr Parker that he was an unlawful non-citizen and detained him in Perth Immigration Detention Centre (PIDC). On 21 October 2004 Mr Parker was granted another Bridging visa and was released from PIDC.
16. Mr Parker claims that his detention in PIDC was unlawful in breach of article 9(1) of the ICCPR. Mr Parker states that when his application for a Spouse visa was refused, he held a valid Bridging visa. Mr Parker claims that under the relevant provisions of the *Migration Act 1958* (Cth) (Migration Act) and the Migration Regulations 1994, the first Bridging visa permitted him to remain in Australia until 28 days after he was notified of the refusal of his Spouse visa. Mr Parker claims that the Notice of refusal of his Spouse visa was defective because it was not dated. Accordingly, Mr Parker claims that because the Notice of Refusal was defective, the first Bridging visa that was granted whilst his application for a Spouse visa was determined remained in effect when Mr Parker was detained in PIDC.
17. Further, Mr Parker claims that his detention in PIDC arbitrarily interfered with his family in breach of articles 17(1) and 23(1).
18. Mr Parker also claims that he was forced to work whilst detained at PIDC in breach of article 8(3)(a) of the ICCPR.



## 5 The Commission's human rights inquiry and complaints function

19. Section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) provides that the Commission has a function to inquire into any act or practice that may be inconsistent with or contrary to any human right.<sup>1</sup>
20. Section 3(1) of the AHRC Act defines 'act' to include an act done by or on behalf of the Commonwealth. Section 3(3) provides that the reference to, or the doing of, an act includes the reference to the refusal or failure to do an act.
21. The functions of the Commission identified in section 11(1)(f) of the AHRC Act are only engaged where an act complained of is not one required by law to be taken.<sup>2</sup>

## 6 Assessment

22. Mr Parker complains of two alleged acts of the Commonwealth.

### 6.1 Act 1

23. Mr Parker claims that the Commonwealth forced him to work whilst detained in PIDC.

#### (a) Act or practice of the Commonwealth?

24. Article 8(3)(a) of the ICCPR states that no one shall be required to perform forced or compulsory labour.
25. Forced labour is defined in article 2(1) of ILO Convention 29 to mean 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.<sup>3</sup>
26. Article 8(3)(c) sets out a number of exceptions to forced or compulsory labour.
27. Professor Manfred Nowak states that the expression 'forced or compulsory labour' should be understood broadly. He states:

In addition to the subjective element of involuntariness, the term's objective requirements are satisfied when the State or a private party orders personal work or service and punishment or a comparable sanction is threatened if this order is not obeyed.<sup>4</sup>
28. Mr Parker claims that while he was detained in PIDC, he was required to undertake work for those operating the detention centre. Mr Parker claims that for 25 hours each week he undertook work consisting of cooking, cleaning, serving food and other general work in or about the detention centre. Mr Parker says that he was never paid for this work.

29. The Commonwealth denies that Mr Parker was required to work whilst detained in PIDC. The Commonwealth claims that at the time that Mr Parker was detained in PIDC a 'Meaningful Activities and Merits Points Scheme' existed whereby detainees could perform work in order to earn points to purchase goods. The Commonwealth states that this program was entirely voluntary and there was no compulsion to participate in the program.
30. There is no information before me, beyond Mr Parker's assertion, to support a finding that the Commonwealth forced Mr Parker to work whilst he was detained in PIDC. Accordingly, I find that Mr Parker has not established the existence of an act or practice within the meaning of section 29(3)(b)(i) of the AHRC Act.

## 6.2 Act 2

31. Mr Parker complains about being detained by the Commonwealth in PIDC.

### (a) Act or practice of the Commonwealth?

32. At the relevant time, section 189 of the Migration Act stated:

(1) If an officer knows or reasonably suspects that a person in the migration zone (other than an excised offshore place) is an unlawful non-citizen, the officer must detain the person.

33. The Commonwealth claims that the officers who detained Mr Parker had the necessary state of mind to detain him. Mr Parker claims that the officers could not have had that state of mind because they should have discovered the undated letter advising him of the refusal of his Spouse visa and have realised that the consequence of this procedural defect was that the Bridging visa attached to Mr Parker's application for a Spouse visa remained in force.
34. I am satisfied that the acts taken by the Departmental officials to satisfy themselves that there was a reasonable suspicion that Mr Parker was an unlawful non-citizen are acts of the Commonwealth within the meaning of section 3 of the AHRC Act.

### (b) Inconsistent with or contrary to human rights?

- (i) Article 9(1) ICCPR

35. Mr Parker claims that his detention in PIDC was contrary to article 9(1) of the ICCPR because it did not occur in accordance with the procedures established by the Migration Act.
36. Section 66 of the Migration Act provides that the Minister is to give a person notice of his or her decision to refuse a visa in the prescribed way. The prescribed way means the way prescribed in the Migration Regulations.
37. Migration Regulation 2.16(3) states that the Minister must notify an applicant of a decision to refuse to grant a visa by one of the methods specified in section 494B of the Migration Act. Section 494B(4) provides that the notification of refusal of a visa must be dated and must be despatched within three days of the date of the document. Given that the Notice issued to Mr Parker was undated, it did not comply with section 494B of the Migration Act.

38. Further, section 66(2)(d)(ii) of the Migration Act provides that if an applicant has a right to have a decision reviewed, notification of a visa decision must state the time in which an application for review may be made. Regulation 4.10(1) outlines the timeframes in which an applicant must lodge an application for review of a decision that is reviewable by the Migration Review Tribunal. Mr Parker claims that given the Notice of Cancellation was undated, he could not have been given proper notification in accordance with Regulation 4.10(1).
39. Paragraph 010.511(b)(ii) of Schedule 2 of the Migration Regulations provides that a Bridging visa granted to a non-citizen who has applied for a substantive visa is in effect for 28 days after the visa holder is notified of the decision on his or her substantive visa. Mr Parker claims that because he was never properly notified of the decision to cancel his visa, the Bridging visa connected to his Spouse visa remained in effect throughout the time that he was detained in PIDC.
40. Mr Parker notes that Migration Series Instructions (MSIs) in force at the time that he was detained advised Departmental officers of the importance of having reasonable grounds to suspect that a person is an unlawful non-citizen. The MSIs informed officers that they must carefully check all relevant information including personal and departmental files. Mr Parker claims that the officer who detained him should have realised that the notification of refusal of Spouse visa was undated and therefore defective and as a consequence Mr Parker continued to hold a Bridging visa. Mr Parker states that given this, the departmental officer who detained him was never in a position to reasonably suspect that he was an unlawful non-citizen and thus did not have the power to detain him.
41. The Commonwealth agrees that the notification of refusal of Spouse visa to Mr Parker was defective and the result of this defect was that the Bridging visa connected to Mr Parker's Spouse visa remained in force. However, the Commonwealth denies that Mr Parker's detention was unlawful.
42. The Commonwealth states that at the time that Mr Parker was interviewed by the Department, the Department was not aware of the defect in the letter advising Mr Parker of the refusal of his application for a Spouse visa. The Commonwealth states that given the Department was unaware of this defect, officers of the Department believed that the basis for forming a reasonable suspicion required by section 189(1) of the Migration Act was satisfied.
43. The Commonwealth claims that officers responsible for detaining Mr Parker continued to hold a reasonable suspicion that Mr Parker was an unlawful non-citizen until he was granted a visa and released from PIDC. The Commonwealth notes that the defect in the letter refusing Mr Parker a Spouse visa was not discovered until 2005.
44. The Commonwealth submits that there was no cause for the detaining officers to revisit the notification of the Spouse visa refusal. The Commonwealth states that as far as those officers were concerned, there was a valid Protection visa refusal on file subsequent to which Mr Parker's Bridging visa has expired.
45. The Commonwealth further alleges that the process by which the Department subsequently determined that Mr Parker still held a Bridging visa was quite complex and was not something that could have been discovered without careful perusal of the entire file. The Commonwealth submits that at the time Mr Parker was detained, and throughout his detention, there was no reason for officers to consider that such an examination of the file was required or necessary.

46. The MSIs in force at the relevant time instructed Departmental officers that forming a reasonable suspicion about whether a person is an unlawful non-citizen was an important matter that could have grave consequences. MSI 329: Unlawful non-citizens stated:

6.3.2 Officers have significant detention powers under Division 7 of Part 2 of the Migration Act 1958. It is essential to the responsible and lawful exercise of those powers that officers know or have “reasonable grounds to suspect” that a person is an unlawful non-citizen and therefore liable to be detained before that person is detained. In short “reasonable grounds to suspect” is a lower standard of proof than “belief”. The grounds to suspect must be reasonable, however, and should be documented.

#### **Checking Procedures**

6.3.5 Information should be carefully checked and substantiated as far as practicable to establish to a high degree of probability whether or not a person is an unlawful non-citizen, deportee, or a visa holder whose visa is liable for cancellation.

6.3.6 To find out the facts of a case, officers may have a range of specific information from which to establish a substantive case. This might require a check of departmental records including:

personal files;

47. It is reasonable to expect that officers of the Department with the power to detain unlawful non-citizens would be familiar with the provisions of the Migration Act and Migration Regulations relevant to when a person becomes an unlawful non-citizen. Further, the MSIs provide decision makers with instructions as to the appropriate procedures to follow in forming a reasonable suspicion that a person is an unlawful non-citizen.
48. Both paragraph 010.511(b)(ii) of the Migration Regulations and MSI-351 Bridging Visas – Overview state that a Bridging visa will remain in force for 28 days after the notification of the decision on the application or until a final decision on the application has been made.
49. In *Goldie v Commonwealth of Australia and Others*,<sup>5</sup> (Goldie) Gray and Lee JJ found that the word ‘reasonably’ required that a suspicion that a person is an unlawful non-citizen be justifiable upon objective examination of relevant material. In *Goldie*, the Department made a decision to cancel the appellant’s visa based on computer records without having also searched the appellant’s file. The officer formed the view that the appellant was an unlawful non-citizen and detained the appellant pursuant to section 198(1) of the Migration Act. The appellant in fact held a valid visa at the time that he was detained. The court found that there was an ‘absence of sufficient search or inquiry to make the formation of the suspicion justifiable on objective examination’.
50. The majority in *Goldie* stated:
- [T]he appropriate construction of s 189 is that an officer, in forming a reasonable suspicion, is obliged to make due inquiry to obtain material likely to the formation of that suspicion.
51. The deprivation of a person’s liberty is a serious matter and should only occur strictly in accordance with law. In circumstances where a person has been granted a number of Bridging visas, it is reasonable to expect that before detaining such a person, a Departmental officer would check the Department’s file to ensure that each Bridging visa granted to the person had expired.

52. Where a Bridging visa expires because the person has been notified of a refusal to grant a visa, I consider that it is reasonable to expect that a Departmental officer would check whether the notification of refusal of the visa was valid. I am of the view that there was not a sufficient search by the officers who detained Mr Parker to make the formation of reasonable suspicion justifiable on objective examination.
53. I find that the Commonwealth did not detain Mr Parker in accordance with the procedures established by law and as such Mr Parker's detention was inconsistent with the right to liberty within the meaning of article 9(1) of the ICCPR.
54. I do not consider it necessary to express a view on whether Mr Parker's detention was arbitrary in the broader sense in addition to being unlawful.
- (ii) Articles 17(1) and 23(1) ICCPR
55. Article 17(1) of the ICCPR states:  
No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
56. Article 23(1) of the ICCPR states:  
The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
57. Professor Manfred Nowak has noted that:  
[T]he significance of Art. 23(1) lies in the protected existence of the institution "family", whereas the right to non-interference with family life is primarily guaranteed by Art. 17. However, this distinction is difficult to maintain in practice.
58. For the reasons set out in Australian Human Rights Commission Report 39 the Commission is of the view that in cases alleging a State's arbitrary interference with a person's family, it is appropriate to assess the alleged breach under Article 17(1). If an act is assessed as breaching the right not to be subjected to an arbitrary interference with a person's family, it will usually follow that that breach is in addition to (or in conjunction with) a breach of article 23(1).
59. Mr Parker claims that his detention in PIDC arbitrarily interfered with his family because he did not see his children whilst he was detained. Mr Parker states that his ex-wife refused to bring his children to PIDC and that were he not in detention, he would have seen his children in the period that he was detained.
60. The Commonwealth denies that Mr Parker's detention arbitrarily interfered with his family. DIAC states that it would have facilitated visits between Mr Parker and his children if his ex-wife had brought Mr Parker's children to visit him.
61. The Commonwealth advises that the Department was informed by Mr Parker's former wife that she and Mr Parker separated in April 2001. At this time, Mr Parker's children were aged three and two years old. Mr Parker was placed in PIDC in 2004. Mr Parker has not provided any evidence as to the nature or closeness of the relationship between himself and his children, either before his separation from his wife or after that time. There is no information before me as to the level of contact that Mr Parker had with his children or his involvement in decisions affecting his children's welfare.
62. Based on the information currently before the Commission, I cannot be satisfied that there was an arbitrary interference with the family in breach of articles 17(1) and 23(1) of the ICCPR.

# 7 Findings and recommendations

## 7.1 Power to make recommendations

63. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.<sup>6</sup> The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.<sup>7</sup>

64. The Commission may also recommend:

- the payment of compensation to, or in respect of, a person who has suffered loss or damage; and
- the taking of other action to remedy or reduce the loss or damage suffered by a person.<sup>8</sup>

## 7.2 Consideration of compensation

65. There is no judicial guidance dealing with the assessment of recommendations for financial compensation for breaches of human rights under the AHRC Act.

66. However, in considering the assessment of a recommendation for compensation under section 35 of the AHRC Act (relating to discrimination matters under Part II, Division 4 of the AHRC Act), the Federal Court has indicated that tort principles for the assessment of damages should be applied.

67. I am of the view that this is the appropriate approach to take to the present matter. For this reason, so far as is possible in the case of a recommendation for compensation, the object should be to place the injured party in the same position as if the wrong had not occurred.

68. The damages awarded in false imprisonment provide an appropriate guide for the award of compensation for a breach of art 9(1). This is because the damages that are available in false imprisonment matters provide an indication of how the courts have considered it appropriate to compensate for loss of liberty.

69. The principal heads of damage for a tort of this nature are injury to liberty (the loss of freedom considered primarily from a non-pecuniary standpoint) and injury to feelings (the indignity, mental suffering, disgrace and humiliation, with any attendant loss of social status).<sup>9</sup>

70. I note that the following awards of damages have been made for injury to liberty and provide a useful reference point in the present case.

71. In *Taylor v Ruddock*,<sup>10</sup> the Court found that the plaintiff was unlawfully imprisoned and awarded him \$50 000 for the first period of 161 days and \$60 000 for the second period of 155 days. In awarding Mr Taylor \$110,000, the District Court took into account the fact that Mr Taylor had a long criminal record and that this was not his first experience of a loss of liberty. He was also considered to be a person of low repute who would not have felt the disgrace and humiliation experienced by a person of good character in similar circumstances.<sup>11</sup>

72. In *Goldie v Commonwealth of Australia & Ors (No 2)*<sup>12</sup> Mr Goldie was awarded damages of \$22,000 for false imprisonment being wrongful arrest and detention under the Migration Act for four days.

73. In *Spautz v Butterworth*<sup>13</sup> Mr Spautz was awarded \$75,000 in damages for his wrongful imprisonment as a result of failing to pay a fine. Mr Spautz spent 56 days in prison and his damages award reflects the length of his incarceration. His time in prison included seven days in solitary confinement.

### 7.3 Recommendation that compensation be paid for loss of liberty

74. I have found that Mr Parker's detention in PIDC from 30 April 2004 until 31 October 2004 was not in accordance with the procedure established by law within the meaning of article 9(1) of the ICCPR.
75. Assessing compensation in such circumstances is difficult and requires a degree of judgment. I note that Mr Parker did not have a criminal record. Therefore I consider that Mr Parker would have felt the disgrace and humiliation experienced by a person of good character.
76. Taking into account the guidance provided by the decisions referred to above, I consider that payment of compensation in the amount of \$100 000 is appropriate.

### 7.4 Apology

77. In addition to compensation, I consider that it would be appropriate for the Commonwealth to provide a formal written apology to Mr Parker for the breaches of his human rights. Apologies are important remedies for breaches of human rights. They, at least to some extent, alleviate the suffering of those who have been wronged.<sup>14</sup>

### 7.5 Change to policy or operations

78. I recommend that the Department conduct training for all 'officers' within the meaning of section 189(1) of the Migration Act on the MSIs, including the importance of carefully reviewing the entire file, before exercising powers under section 189(1).



Gillian Triggs  
**President**  
Australian Human Rights Commission

1 November 2013

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- 1 Section 3(1) of the AHRC Act defines human rights to include the rights recognised by the ICCPR.
  - 2 See, *Secretary, Department of Defence v HREOC, Burgess & Ors* ('Burgess') (1997) 78 FCR 208.
  - 3 *Convention Concerning Forced or Compulsory Labour* (ILO Convention 29), opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932).
  - 4 M Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (2<sup>nd</sup> ed, 2005) 201.
  - 5 [2002] FCA 433.
  - 6 AHRC Act s 29(2)(a).
  - 7 AHRC Act s 29(2)(b).
  - 8 AHRC Act s 29(2)(c).
  - 9 *Cassell & Co Ltd v Broome* (1972) AC 1027, 1124; *Spautz v Butterworth & Anor* (1996) 41 NSWLR 1 (Clarke JA); *Vignoli v Sydney Harbour Casino* [1999] NSWSC 1113 (22 November 1999), [87].
  - 10 *Taylor v Ruddock* (unreported, 18 December 2002, NSW District Court (Murrell DCJ)).
  - 11 *Taylor v Ruddock* (unreported, 18 December 2002, NSW District Court (Murrell DCJ)) [140]. On appeal, the Court of Appeal of New South Wales considered that the award was low but in the acceptable range. The Court noted that 'as the term of imprisonment extends the effect upon the person falsely imprisoned does progressively diminish': *Ruddock v Taylor* [2003] NSWCA 262 [49]-[50].
  - 12 [2004] FCA 156.
  - 13 (1996) 41 NSWLR 1 (Clarke JA).
  - 14 D Shelton, *Remedies in International Human Rights Law* (2000) 151.







## Further Information

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