



Australian  
Human Rights  
Commission

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# Kong v Commonwealth of Australia (DIBP)

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[2015] AusHRC 98

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Immigration and Border  
Protection)**

[2015] AusHRC 98

Report into arbitrary detention

Australian Human Rights Commission 2015



Australian  
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**Australian  
Human Rights  
Commission**

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October 2015

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

Dear Attorney,

I have completed my report pursuant to section 11(1)(f)(ii) of the *Australian Human Rights Commission Act 1986* (Cth) into the complaint made by Mr Kong against the Commonwealth of Australia – Department of Immigration and Border Protection (Department).

I have found that Mr Kong's detention at Villawood Immigration Detention Centre from 28 March 2011 until 16 December 2011 was arbitrary within the meaning of article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

In light of my findings, I recommend that the Commonwealth pay compensation to Mr Kong and provide him with an apology.

By letter dated 26 June 2015 the Department provided a response to my recommendations. I have set out the Department's response in part 8 of this report.

I enclose a copy of my report.

Yours sincerely,

A handwritten signature in black ink, reading "Gillian Triggs".

Gillian Triggs  
**President**  
Australian Human Rights Commission

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# 1 Introduction to this inquiry

1. This is a report setting out the findings of the Australian Human Rights Commission (Commission) following an inquiry into a complaint by Mr Tian Le Kong against the Commonwealth of Australia - Department of Immigration and Citizenship (as it then was – it has subsequently been redesignated the Department of Immigration and Border Protection) (Department) alleging a breach of his human rights.
2. Mr Kong came to Australia on a student visa in 2001. This visa was cancelled pursuant to s 116 of the *Migration Act 1958* (Cth) (Migration Act), on the ground that he breached the condition 8202 (meet course requirements). He was granted several bridging visas while he challenged the decision to cancel his student visa. His final bridging visa expired on 20 March 2011. On 28 March 2011, Mr Kong presented himself to the Department and was detained at the Villawood Immigration Detention Centre (VIDC). He was detained for approximately 9 months until his release on a bridging visa on 16 December 2011. He was granted several more bridging visas until he was granted a permanent protection visa on 7 November 2013.
3. Mr Kong complains that his detention at VIDC from 28 March 2011 until 16 December 2011 was arbitrary, contrary to article 9 of the *International Covenant on Civil and Political Rights* (ICCPR). He also complains about his detention in the Blaxland Compound.
4. This inquiry has been undertaken pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
5. As a result of the inquiry, I find that:
  - a. the Commonwealth's failure to either grant Mr Kong a bridging visa or detain him in a less restrictive way, during the 9 months he was detained in an immigration detention centre, was inconsistent with or contrary to article 9(1) of the ICCPR; and
  - b. the Commonwealth's placement of Mr Kong in the high security Blaxland compound was not in itself a breach of articles 9 or 10 of the ICCPR.
6. I have recommended that:
  - a. the Commonwealth pay to Mr Kong appropriate compensation; and
  - b. the Commonwealth provide a formal written apology to Mr Kong.

## 2 Background

7. Mr Kong is a 46 year old citizen of the People's Republic of China who was actively involved in the May 1989 Tiananmen Square protests. He first came to Australia on 4 March 2001 on a student visa (subclass 560). His wife and elder child came to Australia with him on dependent visas. His second child was born in Australia.
8. On 6 May 2004, Mr Kong's student visa was cancelled due to a breach of condition 8202 (meet course requirements). Mr Kong's wife and elder child's dependent visas were also cancelled. Mrs Kong and the children were in China at that time and were not permitted to return to Australia.

9. Mr Kong was granted several bridging visas while he unsuccessfully challenged the Department's decision to cancel his visa in the Migration Review Tribunal, Federal Magistrates Court, the Full Federal Court and the High Court. On 8 January 2008, Mr Kong applied for a protection visa, which was refused on 29 February 2008. Mr Kong unsuccessfully challenged the refusal in the Refugee Review Tribunal and the Federal Magistrates Court. The Federal Court refused Mr Kong's application to extend the time to appeal the judgement of the Federal Magistrates Court.
10. On 20 March 2011, Mr Kong's bridging visa expired. On 28 March 2011, Mr Kong voluntarily presented himself to the Department's compliance office and was detained at VIDC.
11. On 20 April 2011, there was a riot at the VIDC. Mr Kong was identified as being involved in the riot and subsequently became 'a person of interest' to the Australian Federal Police. On 23 April 2011, he was moved to the Blaxland compound, a high security facility within the VIDC. On 18 July 2011, Mr Kong was cleared of any involvement in the riot and transferred to the Hughes compound, a less restrictive facility. Mr Kong was then transferred to the Annex on 4 August 2011 following his initiation of a voluntary hunger strike. Mr Kong remained in the Annex until he discontinued his hunger strike on 6 September 2011. Mr Kong was then transferred to the Blaxland compound where he remained until his release from detention.
12. On 16 December 2011, Mr Kong was released from detention on a bridging visa. Mr Kong was subsequently granted several more bridging visas.
13. On 19 December 2011, the Minister requested a submission under s 48B of the Migration Act, to assist him to determine whether to lift the bar preventing Mr Kong from making another protection visa application under s 48A of the Migration Act. On 19 March 2012, the Minister intervened under s 48B of the Migration Act allowing Mr Kong to make another protection visa application. On 13 September 2012, the Department refused Mr Kong a protection visa. On 2 October 2013, the Refugee Review Tribunal set aside the Department's decision to refuse Mr Kong a protection visa and remitted the decision back to the Department.
14. The Department granted Mr Kong a permanent protection visa on 7 November 2013.

## 3 Legislative framework

### 3.1 Functions of the Commission

15. Section 11(1)(f) of the AHRC Act provides that the Commission has the function to inquire into any act or practice that may be inconsistent with or contrary to any human right.
16. Section 20(1)(b) of the AHRC Act requires the Commission to perform that function when a complaint is made to it in writing alleging such an act or practice.

### 3.2 What is an 'act' or 'practice'?

17. The terms 'act' and 'practice' are defined in s 3(1) of the AHRC Act to include an act done or a practice engaged in by or on behalf of the Commonwealth or an authority of the Commonwealth or under an enactment.



18. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.
19. The functions of the Commission identified in s 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken, that is, where the relevant act or practice is within the discretion of the Commonwealth.<sup>1</sup> Therefore, if a law requires that the act or practice be done by or on behalf of the Commonwealth, and there is no discretion involved, the act or practice done pursuant to that statutory provision will be outside the scope of the Commission's human rights inquiry jurisdiction.

### 3.3 What is a human right?

20. The phrase 'human rights' is defined by s 3(1) of the AHRC Act to include the rights and freedoms recognised in the ICCPR, or recognised or declared by any relevant international instrument.
21. Articles 9(1) and 10(1) of the ICCPR are relevant to this inquiry. Article 9(1) of the ICCPR provides:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
22. Article 10(1) of the ICCPR provides:

[A]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

## 4 Act or practice of the Commonwealth?

23. The Commonwealth detained Mr Kong in an immigration detention centre for 9 months from 28 March 2011 until 16 December 2011.
24. Section 189(1) of the Migration Act requires the detention of unlawful non-citizens. As Mr Kong's student visa had been cancelled and his bridging visa had expired, he was an unlawful non-citizen and therefore the Migration Act required that he be detained.
25. However, under s 195A of the Migration Act, if the Minister thinks it is in the public interest to do so, the Minister may grant a visa to a person detained under s 189 of the Migration Act.
26. The Minister could also have made a residence determination. Section 197AB of the Migration Act provides:

If the Minister thinks that it is in the public interest to do so, the Minister may make a determination (a **residence determination**) to the effect that one or more specified persons to whom this subdivision applies are to reside at a specified place, instead of being detained at a place covered by the definition of immigration detention in subsection 5(1).
27. Further, the definition of 'immigration detention' includes 'being held by, or on behalf of, an officer in another place approved by the Minister in writing'.<sup>2</sup>

28. Accordingly, the Minister could have granted a visa to Mr Kong, made a residence determination in relation to him under s 197AB of the Migration Act or could have approved that Mr Kong reside in a place other than the VIDC.
29. I therefore find that the Commonwealth's failure to grant Mr Kong a bridging visa or place him in a less restrictive form of detention than the VIDC, during the 9 months he was detained, can be characterised as an 'act' within the definition of s 3 of the AHRC Act.

## 5 Arbitrary detention

30. Mr Kong claims that his detention in VIDC from 28 March 2011 until 16 December 2011 was arbitrary within the meaning of article 9(1) of the ICCPR.

### 5.1 Law

31. The following principles relating to arbitrary detention within the meaning of article 9 of the ICCPR arise from international human rights jurisprudence:
- (a) 'detention' includes immigration detention;<sup>3</sup>
  - (b) lawful detention may become arbitrary when a person's deprivation of liberty becomes unjust, unreasonable or disproportionate to the Commonwealth's legitimate aim of ensuring the effective operation of Australia's migration system;<sup>4</sup>
  - (c) arbitrariness is not to be equated with 'against the law'; it must be interpreted more broadly to include elements of inappropriateness, injustice or lack of predictability;<sup>5</sup> and
  - (d) detention should not continue beyond the period for which a State party can provide appropriate justification.<sup>6</sup>
32. In *Van Alphen v The Netherlands* the United Nations Human Rights Committee (UNHRC) found detention for a period of two months to be arbitrary because the State Party did not show that remand in custody was necessary to prevent flight, interference with evidence or recurrence of crime.<sup>7</sup>
33. The UNHRC has held in several communications that there is an obligation on the State Party to demonstrate that there was not a less invasive way than detention to achieve the ends of the State Party's immigration policy (for example the imposition of reporting obligations, sureties or other conditions) in order to avoid the conclusion that detention was arbitrary.<sup>8</sup>

### 5.2 The Department's response

34. When asked the reason for Mr Kong's detention in an immigration detention centre, the Department responded that 'once lawfully detained, the only circumstances, under the Act, in which a client can be released from detention is when they are granted a visa or removed from Australia'.

35. On 28 April 2011, Mr Kong's case was referred to the Minister for consideration of a residence determination under s 197AB of the Migration Act. On 29 July 2011, this referral was finalised as 'no longer required' as Mr Kong was scheduled to be involuntarily removed from Australia on 17 August 2011. On 16 August 2011, Mr Kong's involuntary removal was suspended when the Full Federal Court ordered that his removal not be progressed while the appeal of his student visa cancellation was ongoing. The materials provided by the Department disclose that no further consideration was given to referring Mr Kong's case to the Minister for a residence determination. This is despite the fact that Mr Kong was cleared of any involvement in the VIDC riot on 18 July 2011. Mr Kong also made numerous requests to the Minister to exercise his discretion under sections 417 and 351 of the Migration Act to intervene. Each time the Minister either did not consider the request or declined to intervene.
36. The Department states that it reviewed Mr Kong's detention on eight occasions, on 3 May 2011, 23 May 2011, 29 June 2011, 11 August 2011, 17 August 2011, 19 November 2011, 16 November 2011 and 12 December 2011. At each of these reviews, no change was recommended.

### 5.3 Finding

37. I am not satisfied that Mr Kong's detention at VIDC was necessary or proportionate to the Commonwealth's legitimate aim of ensuring the effective operation of its migration system. Mr Kong had been living in the community on bridging visas prior to his detention and presented himself voluntarily to the Department when his bridging visa expired. This indicates that Mr Kong was prepared to co-operate with the Department and suggests he did not represent a flight risk. There is no evidence that he posed any risk to the Australian community. On the material before me, I am not satisfied that the detention of Mr Kong in an immigration detention centre was justified.
38. The statutory provisions identified above empowered the Minister to grant Mr Kong a bridging visa while his immigration status was being resolved or to detain Mr Kong in the community. I find that the failure of the Commonwealth to grant Mr Kong a bridging visa or place him in a less restrictive form of detention than the VIDC was an act that was inconsistent with or contrary to the human right recognised in article 9(1) of the ICCPR. I find that Mr Kong's detention in the VIDC for 9 months was arbitrary in breach of article 9 of the ICCPR.

## 6 Detention in the Blaxland compound

39. Mr Kong also complains about his transfer to the Blaxland compound in the VIDC following the VIDC riots. Mr Kong states that on '23 April 2011, [he was] forcefully detained in the highest secured and isolated small dorm in Blaxland compound'.
40. Mr Kong states that he was 'an innocent person with a clean character record' and the serious criminal offence accusation brought him 'heavy stress, anxiety, depress, pain and anger'. He states that 'after 13 weeks I have been detained in isolated prison-like dorm, I was suddenly transferred back to Hughes compound in the middle of July 2011, but without any explanations, without any investigations and without any investigation reports'.

41. The Department states that Mr Kong was 'transferred to Blaxland Accommodation Area on 23 April 2011 after he was identified by the Detention Services Provider (Serco) as a 'person of interest' to the Australian Federal Police in relation to the major disturbances that occurred on 20 April 2011'. The Department further states that 'Mr Kong was implicated in the destruction of the fence line separating the Medical Unit/Kitchen from the Hughes compound'. The Department relocated all 'persons of interest' to the Blaxland compound pending investigation by the Australian Federal Police (AFP).
42. The Department states that Mr Kong's Case Manager informed him that this was the reason for his move to Blaxland.
43. I accept the Department's explanation for Mr Kong's transfer to the high security Blaxland Compound. The Department has indicated that the AFP inquired into the incident and subsequently cleared Mr Kong of any involvement. Once the inquiry concluded on 18 July 2011, the Department moved Mr Kong back to the Hughes Compound.
44. I accept that Mr Kong found his transfer to Blaxland and the allegation that he was involved in the VIDC riots to be distressing.
45. I have already found that Mr Kong's detention at VIDC was arbitrary. On the material before me, I find that Mr Kong's transfer to Blaxland from 23 April to 18 July 2011, is not in itself a breach of articles 9 or 10 of the ICCPR.

## 7 Recommendations

46. 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>9</sup> The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.<sup>10</sup> The Commission may also recommend:
  - a. The payment of compensation to, or in respect of, a person who has suffered loss or damage; and
  - b. Other action to remedy or reduce the loss or damage suffered by a person.<sup>11</sup>

### 7.1 Compensation

47. There is no judicial guidance dealing with the assessment of recommendations for financial compensation for breaches of human rights under the AHRC Act.
48. However, in considering the assessment of a recommendation for compensation under s 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.<sup>12</sup>
49. 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.<sup>13</sup>

**(a) Principles relating to compensation**

50. I have been asked to consider compensation for Mr Kong for being arbitrarily detained in contravention of article 9(1) of the ICCPR.
51. The tort of false imprisonment is a more limited action than an action for breach of article 9(1) of the ICCPR. This is because an action for false imprisonment cannot succeed where there is lawful authority for the detention, whereas a breach of article 9(1) of the ICCPR will be made out where it can be established that the detention was arbitrary, irrespective of legality.
52. Notwithstanding this important distinction, the damages awarded in false imprisonment cases provide an appropriate guide for the award of compensation for the breach of article 9(1) of the ICCPR. 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.
53. The principle 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>14</sup>
54. In the recent case of *Fernando v Commonwealth of Australia (No 5)*,<sup>15</sup> Siopis J considered the judicial guidance available on the quantum of damages for loss of liberty for a long period arising from wrongful imprisonment. Siopis J referred to the case of *Nye v State of New South Wales*:<sup>16</sup>
- The *Nye* case is useful in one respect, namely, that the court was required to consider the quantum of damages to be awarded to Mr Nye in respect of his loss of liberty for a period of some 16 months which he spent in Long Bay Gaol. In doing so, consistently with the approach recognised by Spigelman CJ in *Ruddock* (NSWCA), the Court did not assess damages by application of a daily rate, but awarded Mr Nye the sum of \$100,000 in general damages. It is also relevant to observe that in *Nye*, the court referred to the fact that for a period of time during his detention in Long Bay Gaol, Mr Nye feared for his life at the hands of other inmates of that gaol.<sup>17</sup>
55. Siopis J noted that further guidance on the quantum of damages for loss of liberty for a long period arising from wrongful imprisonment can be obtained from the case of *Ruddock* (NSWCA).<sup>18</sup> In that case at first instance,<sup>19</sup> the New South Wales District Court awarded the plaintiff, Mr Taylor, the sum of \$116,000 in damages in respect of wrongful imprisonment, consequent upon his detention following the cancellation of his permanent residency visa on character grounds.
56. Mr Taylor was detained for two separate periods. The first was for 161 days and the second was for 155 days. In that case, because Mr Taylor's convictions were in relation to sexual offences against children, Mr Taylor was detained in a state prison under a 'strict protection' regime and not in an immigration detention centre. The detention regime to which Mr Taylor was subjected was described as a 'particularly harsh one'.
57. The Court also 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>20</sup>

58. On appeal, in the New South Wales Court of Appeal, Spigelman CJ considered the adequacy of the damages awarded to Mr Taylor and observed that the quantum of damages was low, but not so low as to amount to appellable error.<sup>21</sup> Spigelman CJ also observed that:

Damages for false imprisonment cannot be computed on the basis that there is some kind of applicable daily rate. A substantial proportion of the ultimate award must be given for what has been described as “the initial shock of being arrested”. (*Thompson; Hsu v Commissioner of Police of the Metropolis* [1998] QB 498 at 515). As the term of imprisonment extends the effect upon the person falsely imprisoned does progressively diminish.<sup>22</sup>

59. Although in *Fernando v Commonwealth of Australia (No 5)*, Siopis J ultimately accepted the Commonwealth’s argument that Mr Fernando was only entitled to nominal damages,<sup>23</sup> his Honour considered the sum of general damages he would have awarded in respect of Mr Fernando’s claim if his findings in respect of the Commonwealth’s argument on nominal damages were wrong. Mr Fernando was wrongfully imprisoned for 1,203 days in an immigration detention centre. Siopis J accepted Mr Fernando’s evidence that he suffered anxiety and stress during his detention and, also, that he was treated for depression during and after his detention and took these factors into account in assessing the quantum of damages. His Honour also noted that Mr Fernando’s evidence did not suggest that in immigration detention he was subjected to the harsh ‘strict protection’ regime to which Mr Taylor was subjected in a state prison, nor that Mr Fernando feared for his life at the hands of the inmates in the same way that Mr Nye did whilst he was detained at Long Bay Gaol. Taking all of these factors into account, Siopis J stated that he would have awarded Mr Fernando in respect of his 1,203 days in detention the sum of \$265,000.<sup>24</sup>

**(b) Recommendation that compensation be paid**

60. I have found that Mr Kong’s detention from 28 March 2011 until 16 December 2011 was arbitrary within the meaning of article 9(1) of the ICCPR.
61. I note that Mr Kong had not been previously imprisoned in Australia and would have felt the disgrace and humiliation experienced by a person of good character. I note also that Mr Kong spent almost four months in a more restrictive detention centre setting in the Blaxland compound and the Annex.
62. I consider that the Commonwealth should pay to Mr Kong an appropriate amount of compensation to reflect the loss of liberty caused by his detention in accordance with the principles outlined above.

## 7.2 Apology

63. In addition to compensation, I consider that it is appropriate that the Commonwealth provide a formal written apology to Mr Kong. 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>25</sup>

## 8 Department's response

64. On 26 June 2015, the Department provided a response to my findings and recommendations.

65. In relation to my recommendations that Mr Kong be paid compensation and provided an apology, the Department did not accept these recommendations, stating:

Any monetary claim for compensation against the Commonwealth can only be considered where it is consistent with the *Legal Services Directions 2005*. The *Legal Services Directions 2005* provide that a matter may only be settled where there is at least a meaningful prospect of liability being established against the Commonwealth. Furthermore, the amount of compensation that is offered must be in accordance with legal principle and practice.

The Department considers that Mr Kong's detention was lawful and that the decisions and processes were appropriate having regard to the circumstances of his case. The Department therefore considers that there is no meaningful prospect of liability being established against the Commonwealth under Australian domestic law and as such no proper legal basis to consider a payment of compensation to Mr Kong. The Department is therefore unable to pay compensation to Mr Kong.

Although there are limited circumstances in which the Commonwealth may pay compensation on a discretionary basis, *Resource Management No. 409* and *No. 401* generally limit such payments to situations where a person has suffered some form of financial detriment or injury arising out of defective administration on the part of the Commonwealth, or otherwise experienced an anomalous, inequitable or unintended outcome as a result of the application of Commonwealth legislation or policy. On the basis of the current information the Department is not satisfied that there is a proper basis for payment of discretionary compensation at this time.

The Department therefore holds the view that there is no basis for payment of compensation to Mr Kong nor a formal written apology and advises that it will not be taking any further action in relation to these recommendations.

66. I report accordingly to the Attorney-General.



Gillian Triggs  
**President**  
Australian Human Rights Commission

October 2015

- 1 See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208, where Branson J found that the Commission could not, in conducting its inquiry, disregard the legal obligations of the secretary in exercising a statutory power. Note in particular 212-3 and 214-5.
- 2 *Migration Act 1958* (Cth), s 5.
- 3 UN Human Rights Committee, General Comment 8 (1982) *Right to liberty and security of persons (Article 9)*. See also *A v Australia* [1997] UNHRC 7, UN Doc CCPR/C/59/D/560/1993; *C v Australia* [2002] UNHRC 52, UN Doc CCPR/C/76/D/900/1999; *Baban v Australia* [2003] UNHRC 22, UN Doc CCPR/C/78/D/1014/2001.
- 4 UN Human Rights Committee, General Comment 31 (2004), [6]. See also Joseph, Schultz and Castan, *The International Covenant on Civil and Political Rights Cases, Materials and Commentary* (2nd ed, 2004), 308, [11.10].
- 5 *Manga v Attorney-General* [2000] 2 NZLR 65 at [40]-[42], (Hammond J). See also the views of the UN Human Rights Committee in *Van Alphen v The Netherlands* [1990] UNHRC 22, UN Doc CCPR/C/39/D/305/1988; *A v Australia* [1997] UNHRC 7, UN Doc CCPR/C/59/D/560/1993; *Spakmo v Norway* [1999] UNHRC 42, UN Doc CCPR/C/67/D/631/1995.
- 6 *A v Australia* [1997] UNHRC 7, UN Doc CCPR/C/76/D/900/1993 (the fact that the author may abscond if released into the community was not sufficient reason to justify holding the author in immigration detention for four years); *C v Australia* [2002] UNHRC 52, UN Doc CCPR/C/76/D/900/1999.
- 7 *Van Alphen v The Netherlands* [1990] UNHRC 22, UN Doc CCPR/C/39/D/305/1988.
- 8 *C v Australia* [2002] UNHRC 52, UN Doc CCPR/C/76/D/900/1999; *Shams & Ors v Australia* [2007] UNHRC 73, UN Doc CCPR/C/90/D/1255/2004; *Baban v Australia* [2003] UNHRC 22, CCPR/C/78/D/1014/2001; *D and E v Australia* [2006] UNHRC 32, CCPR/C/87/D/1050/2002.
- 9 AHRC Act, s 29(2)(a).
- 10 AHRC Act, s 29(2)(b).
- 11 AHRC Act, s 29(2)(c).
- 12 *Peacock v The Commonwealth* (2000) 104 FCR 464, 483 (Wilcox J).
- 13 *Hall v A&A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).
- 14 *Cassel & 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, [87].
- 15 [2013] FCA 901.
- 16 [2003] NSWSC 1212.
- 17 [2013] FCA 901, [121].
- 18 *Ruddock v Taylor* (2003) 58 NSWLR 269.
- 19 *Taylor v Ruddock* (Unreported, NSW District Court, Murrell DCJ, 18 December 2002).
- 20 *Taylor v Ruddock* (Unreported, NSW District Court, Murrell DCJ, 18 December 2002), [140].
- 21 *Ruddock v Taylor* (2003) 58 NSWLR 269, 279.
- 22 *Ruddock v Taylor* (2003) 58 NSWLR 269, 279.
- 23 The court awarded nominal damages of one dollar for the unlawful detention of Mr Fernando because as a non-citizen, once he committed a serious crime, he was always liable to have his visa cancelled: *Fernando v Commonwealth of Australia* (No 5) [2013] FCA 901, [98]-[99].
- 24 *Fernando v Commonwealth of Australia* (No 5) [2013] FCA 901, [139].
- 25 D Shelton, *Remedies in International Human Rights Law* (2000), 151.







## Further Information

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