



Australian  
Human Rights  
Commission

---

**Jafari v**

---

**Commonwealth of**

---

**Australia (DIBP)**

---

[2014] AusHRC 85

---

© Australian Human Rights Commission 2014.



ISSN 1837-1183

The Australian Human Rights Commission encourages the dissemination and exchange of information presented in this publication. All material presented in this publication is licenced under a Creative Commons Attribution 3.0 Australia licence, with the exception of the Australian Human Rights Commission Logo.

To view a copy of this licence, visit <http://creativecommons.org/licences/by/3.0/au>.

In essence, you are free to copy, communicate and adapt the work, as long as you attribute the work to the Australian Human Rights Commission and abide by the other licence terms.

**Design and layout** Dancinggirl Designs

**Printing** Masterprint Pty Limited

#### **Electronic format**

This publication can be found in electronic format on the website of the Australian Human Rights Commission:  
[www.humanrights.gov.au/publications/index.html](http://www.humanrights.gov.au/publications/index.html).

#### **Contact details**

For further information about the Australian Human Rights Commission, please visit [www.humanrights.gov.au](http://www.humanrights.gov.au) or email [communications@humanrights.gov.au](mailto:communications@humanrights.gov.au). You can also write to:

Communications Team  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

**Jafari v Commonwealth  
of Australia (Department  
of Immigration and Border  
Protection)**

Report into arbitrary detention

[2014] AusHRC 85

**Australian Human Rights Commission 2014**



**Australian  
Human Rights  
Commission**

# Contents

1	Introduction	2
2	Summary of findings	2
3	Recommendations	2
4	The complaint by Mr Jafari	2
5	The Commission's human rights inquiry and complaints function	3
6	Assessment	4
	6.1 Act or practice of the Commonwealth?	4
	6.2 Inconsistent with or contrary to human rights?	4
7	Recommendations	6
	7.1 Consideration of compensation	6
	7.2 Recommendation that compensation be paid	8
8	The Department's response to my finding and recommendation	8



**Australian  
Human Rights  
Commission**

---

August 2014

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 Samad Ali Jafari against the Commonwealth of Australia – Department of Immigration and Border Protection.

I have found that the Commonwealth's failure to detain Mr Jafari in the least restrictive manner possible was inconsistent with the prohibition on arbitrary detention in article 9(1) of the *International Covenant on Civil and Political Rights*. In light of my findings regarding the acts and practices of the Commonwealth, I recommended that the Commonwealth pay compensation to Mr Jafari in the amount of \$140,000.

By letter dated 16 July 2014, the Department of Immigration and Border Protection provided its response to my finding and recommendation. This response is set out in part 8 of my report.

I enclose a copy of my report.

Yours sincerely

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

Gillian Triggs  
**President**  
Australian Human Rights Commission

---

**Australian Human Rights Commission**

Level 3, 175 Pitt Street, Sydney NSW 2000  
GPO Box 5218, Sydney NSW 2001

Telephone: 02 9284 9600

Facsimile: 02 9284 9611

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

# 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 the complaint lodged by Mr Samad Ali Jafari.
2. Mr Jafari alleges that his treatment by the Commonwealth of Australia – Department of Immigration and Citizenship (subsequently redesignated as the Department of Immigration and Border Protection (the Department)), involved acts or practices inconsistent with or contrary to his human rights under the *International Covenant on Civil and Political Rights* (ICCPR).

# 2 Summary of findings

3. I find that the Commonwealth's failure to detain Mr Jafari in the least restrictive manner possible was inconsistent with the prohibition on arbitrary detention in article 9(1) of the ICCPR.

# 3 Recommendations

4. In light of my findings regarding the acts and practices of the Commonwealth, I recommend that the Commonwealth pay compensation to Mr Jafari in the amount of \$140,000.

# 4 The complaint by Mr Jafari

5. Mr Jafari made a written complaint to the Commission dated 8 June 2012.
6. Mr Jafari is a national of Afghanistan and of the United Kingdom (UK) who arrived on Christmas Island on 15 April 2010 as an undocumented Irregular Maritime Arrival (IMA). He was removed to the UK on 13 June 2012.
7. On 12 July 2010 Mr Jafari's fingerprints matched, in a UK database, with a record for a UK citizen with the name Samad Ali Jafari, as part of the Five Country Conference (FCC). Mr Jafari's name had been identified as Abdul Samad Jafri during the Refugee Status Assessment (RSA) process.
8. On 25 March 2011 Mr Jafari was found not to be a refugee through the RSA process as he could avail himself of protection in the UK. His RSA interview took place on 27 July 2010.
9. On 20 February 2011 Mr Jafari was transferred to Curtin Immigration Detention Centre (CIDC).
10. On 15 April 2011 Mr Jafari requested an Independent Merits Review (IMR) of his RSA decision.
11. On 15 July 2011 an Identity Confirmation Assessment conducted by National Identity Verification and Advice (NIVA) confirmed Mr Jafari is a British citizen who holds a valid passport and can re-enter the UK at any time.
12. On 16 November 2011 the IMR confirmed that Mr Jafari is not considered to be a refugee. The IMR was conducted on 4 September 2011.

13. On 19 January 2012 Mr Jafari commenced a judicial review application in the Federal Magistrate's Court.
14. On 17 April 2012 Mr Jafari was transferred to Melbourne Immigration Transit Accommodation to attend the hearing for his judicial review application. This application was unsuccessful. He was returned to CIDC on 18 April 2012.
15. On 17 May 2012 Mr Jafari was notified of his negative Post-Review Protection Claims (PRPC) assessment and that, as there were no outstanding processes, he would be removed from Australia.
16. On 5 June 2012 Mr Jafari was transferred to Perth Immigration Detention Centre.
17. On 13 June 2012 Mr Jafari was removed to the UK.
18. Mr Jafari claims that his detention by the Commonwealth was arbitrary within the meaning of article 9 of the ICCPR.

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

19. Section 11(1) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) identifies the functions of the Commission. Relevantly section 11(1)(f) gives the Commission the function to inquire into any act or practice that may be inconsistent with or contrary to any human right.
20. Section 20(1)(b) of the AHRC Act requires the Commission to perform the functions referred to in section 11(1)(f) when a complaint in writing is made to the Commission alleging that an act is inconsistent with or contrary to any human right.
21. Section 8(6) of the AHRC Act requires that the functions of the Commission under section 11(1)(f) be performed by the President.
22. Section 3(1) of the AHRC Act defines 'human rights' to include the rights and freedoms recognised by the ICCPR.
23. Article 9(1) of the ICCPR provides:

Everyone has the right to liberty and security of the 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.
24. 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.
25. 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>1</sup>

## 6 Assessment

26. Mr Jafari complains about being detained by the Commonwealth within an immigration detention centre from 15 April 2010, when he was placed in immigration detention, until 13 June 2012, when he was removed from Australia.

### 6.1 Act or practice of the Commonwealth?

27. I find that the Commonwealth's failure to place Mr Jafari in a less restrictive form of detention than an immigration detention centre during his period of immigration detention constitutes an act under the AHRC Act.

28. Mr Jafari was detained by the Commonwealth in immigration detention centres from 15 April 2010 to 13 June 2012.

29. Mr Jafari was detained under section 189(3) of the *Migration Act 1958* (Cth) (Migration Act) while on Christmas Island. At the time Mr Jafari was detained on Christmas Island, section 189(3) of the Migration Act stated that '[i]f an officer knows or reasonably suspects that a person in an excised offshore place is an unlawful non-citizen, the officer may detain the person'. There was no requirement for the Commonwealth to detain Mr Jafari while he was on Christmas Island.

30. While in immigration detention on the mainland Mr Jafari was detained under section 189(1) of the Migration Act. Whilst section 189(1) requires the detention of unlawful non-citizens, it does not require that unlawful non-citizens are detained in an immigration detention centre.

31. Section 197AB(1) of the Migration Act states:

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).

32. 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>

33. Accordingly, the Minister could have made a residence determination in relation to Mr Jafari under section 197AB of the Migration Act or could have approved that he reside in a place other than an immigration detention centre.

### 6.2 Inconsistent with or contrary to human rights?

34. I find that the Commonwealth's failure to detain Mr Jafari in the least restrictive manner possible was arbitrary and inconsistent with his right to liberty in article 9(1) of the ICCPR.

35. The following principles relating to arbitrary detention under 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> every decision to keep a person in detention should be open to periodic review, in order to reassess the necessity of detention.<sup>7</sup>

36. The UNHRC has held in several cases 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>
37. The Department has advised that Mr Jafari was in held detention while his refugee claims and protection visa matters were being progressed in accordance with the Migration Act and Government policy for the management of asylum seekers. In documents provided by the Department it reports that Government policy includes that 'all unauthorised arrivals will be subject to mandatory detention for the purpose of managing health, identity and security risks to the community'.
38. In a report of 15 July 2011 the Department stated that '[c]ontinued detention at this time is appropriate as Mr Jafari's [sic] identity has not been established, and he is not security cleared'. However on the same date an Identity Confirmation Assessment confirmed Mr Jafari is a British citizen who holds a valid passport. Mr Jafari's security referral was cancelled on 12 March 2011 as 'Mr Jafari was found not to be owed protection by the RSA process'.
39. In or about November 2011 Mr Jafari was briefed on the recently announced Government initiative of granting Bridging E visas (BVEs) in certain circumstances while asylum claims are assessed. The Department states that Mr Jafari was considered for release on a bridging visa but 'his judicial review proceedings, ongoing at the time, its subsequent negative outcome and the requirement under the Migration Act 1958 to proceed with his removal from Australia as soon as possible once he had exhausted all avenues for lawful stay precluded him'.
40. I note that as of November 2011 Mr Jafari had been in immigration detention for approximately 19 months. He was also detained for another seven months following this while his judicial proceedings remained ongoing. The Department has not explained why Mr Jafari could not reside in the community while his judicial review proceedings were finalised.
41. The Department did not, at any time during Mr Jafari's period of detention, refer his case to the Minister for consideration of the exercise of his powers under section 195A and/or section 197AB of the Migration Act. Further, based on the material before me it does not appear that the Department conducted a detailed assessment of Mr Jafari's individual circumstances when considering whether he could be referred to the Minister. Rather, in a number of Mr Jafari's case reviews and reports the Department states that given Mr Jafari does not have any 'known vulnerability indicators' or other indicators to suggest that an alternative placement was necessary, he did not meet guidelines for residence determination consideration under section 197AB of the Migration Act.
42. I note that asylum-seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. However Mr Jafari was detained for over two years and the Commonwealth has not explained why he was not able to reside in the community or in a less restrictive form of detention (if necessary, with appropriate conditions imposed to mitigate any identified risks) while his immigration status was initially resolved and for the period his judicial review proceedings were ongoing.

43. On the material before me I am not satisfied that the detention of Mr Jafari in an immigration detention centre was proportionate to the aims of the Commonwealth's immigration policy. It is my finding that that the failure to place Mr Jafari in community detention or another less restrictive form of detention was arbitrary and inconsistent with his right to liberty in article 9 of the ICCPR.

## 7 Recommendations

44. 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>
45. 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>11</sup>

### 7.1 Consideration of compensation

46. There is no judicial guidance dealing with the assessment of recommendations for financial compensation for breaches of human rights under the AHRC Act.
47. 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.<sup>12</sup>
48. 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>
49. The tort of false imprisonment is a more limited action than an action for breach of article 9(1). This is because an action for false imprisonment cannot succeed where there is a lawful justification for the detention, whereas a breach of article 9(1) will be made out where it can be established that the detention was arbitrary irrespective of legality.
50. Notwithstanding this important distinction, the damages awarded in false imprisonment provide an appropriate guide for the award of compensation for a breach of article 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.
51. 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>14</sup>
52. 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 recognized 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>

53. 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.
54. 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'.
55. 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>
56. 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>
57. 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 inmates in the same way that Mr Nye did while he was detained at Long Bay Gaol. Taking all of these factors into account, Siopis J stated that he would have awarded Mr Fernando the sum of \$265,000 in respect of his 1,203 days in detention.<sup>24</sup>

## 7.2 Recommendation that compensation be paid

58. I have found that Mr Jafari's detention was arbitrary within the meaning of article 9(1) of the ICCPR and that he should have been placed in community detention, or another less restrictive form of detention. Mr Jafari was detained in immigration detention centres for approximately 2 years and 2 months.
59. I consider that the Commonwealth should pay Mr Jafari an amount of compensation to reflect the loss of liberty caused by his detention. Had Mr Jafari been transferred to community detention or another less restrictive form of detention, he would still have experienced some curtailment of his liberty and I have taken that into account when assessing compensation.
60. There is no evidence before me to suggest that the circumstances surrounding Mr Jafari being taken into detention were particularly shocking, that the conditions of that detention were particularly harsh, or that Mr Jafari feared for his safety while detained.
61. The information before me indicates that at times, Mr Jafari's detention in an immigration detention centre has impacted on his mental health. I take this factor into account in the quantum of compensation that I have recommended.
62. Assessing compensation in such circumstances is difficult and requires a degree of judgement. Taking into account the guidance provided by the decisions referred to above, I consider that compensation in the amount of \$140,000 is appropriate.

## 8 The Department's response to my finding and recommendation

63. On 16 July 2014, the Department provided its response to my finding and recommendation.
64. The Department noted my finding that the Commonwealth's failure to detain Mr Jafari in the least restrictive manner possible was inconsistent with the prohibition on arbitrary detention in article 9(1) of the ICCPR. The Department also noted my recommendation that the Commonwealth pay compensation to Mr Jafari in the amount of \$140,000. I set out below the Department's response to my recommendation:

The department does not accept this recommendation

The department does not agree that Mr Jafari's detention in immigration detention centres from 15 April 2010 until 13 June 2012, when he was removed from Australia amounts to a breach of Article 9(1) of the *International Covenant on Civil and Political Rights* (ICCPR).

Previous correspondence has outlined Mr Jafari's case history and the legal basis for his detention. The department does not propose to re-cover these issues.

Mr Jafari was not honest and open in his dealings with the Australian authorities. He arrived by boat at Christmas Island and failed to disclose his prior travel to Australia. Mr Jafari was a naturalised citizen of the United Kingdom (UK) and had resided in the UK for up to seven years between 2001 and 2009. Both of these facts were never disclosed to the department.

Despite this information being put to Mr Jafari, he elected to pursue a futile claim for protection in circumstances where return to the United Kingdom was open to him.

The risks associated with making a residence determination with respect to an individual with such a history of proven dishonesty are clear, even had the Minister been minded to exercise his power to do so.

The department remains firmly of the view that Mr Jafari's immigration detention was lawful and not arbitrary for the purposes of article 9(1) of the ICCPR. Any consideration by the Commonwealth to pay compensation on a legal liability basis, must be made by reference to 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 Jafari's detention was lawful and that the decision 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 Jafari.

65. I report accordingly to the Attorney-General.



Gillian Triggs  
**President**  
Australian Human Rights Commission

August 2014

- 
- 1 See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.
  - 2 *Migration Act 1958* (Cth), s 5.
  - 3 UN Human Rights Committee, General Comment 8 (1982). See also *A v Australia*, Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993; *C v Australia*, Communication No 900/1999 UN Doc CCPR/C/76/D/900/1999; *Baban v Australia*, Communication No 1014/2001 UN Doc CCPR/C/78/D/1014/2001.
  - 4 UN Human Rights Committee, Draft General Comment 35 (2013) [18], [19]. 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, [40]-[42], (Hammond J). See also the views of the UN Human Rights Committee in *Van Alphen v The Netherlands*, Communication No 305/1988, UN Doc CCPR/C/39/D/305/1988; *A v Australia*, Communication No 560/1993, UN Doc CCPR/C/39/D/305/1988; *Spakmo v Norway*, Communication No 631/1995, UN Doc CCPR/C/67/D/631/1995.
  - 6 *A v Australia*, Communication No 560/1993, UN Doc CCPR/C/76/D/900/1993; *C v Australia* Communication No 900/1999 UN Doc CCPR/c/76/D/900/1999.
  - 7 *Shafiq v Australia*, Communication No 1324/2004, UN Doc CCPR/C/88/1324/2004, para 7.2.
  - 8 *C v Australia* Communication No 900/1999 UN Doc CCPR/c/76/D/900/1999; *Shams & Ors v Australia* UN Doc CCPR/C/90/D/1255; *Baban v Australia* CCPR/C/78/D/1014/2001; *D and E v Australia* CCPR/C/87/D/1050/2002.

- 9 *Australian Human Rights Commission Act 1986* (Cth) (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* 30 (2000) 104 FCR 464, 483 (Wilcox J).
- 13 See *Hall v A & A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).
- 14 *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].
- 15 [2013] FCA 901.
- 16 [2003] NSWSC 1212.
- 17 [2013] FCA 901 at [121].
- 18 *Ruddock v Taylor* (2003) 58 NSWLR 269.
- 19 *Taylor v Ruddock* (unreported, 18 December 2002, NSW District Court (Murrell DCJ)).
- 20 *Taylor v Ruddock* (unreported, 18 December 2002, NSW District Court (Murrell DCJ)) [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].

## Further Information

### **Australian Human Rights Commission**

Level 3, 175 Pitt Street  
SYDNEY NSW 2000

GPO Box 5218  
SYDNEY NSW 2001  
Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419  
General enquiries and publications: 1300 369 711  
TTY: 1800 620 241  
Fax: (02) 9284 9611  
Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

For detailed and up to date information about the  
Australian Human Rights Commission visit our website at:  
[www.humanrights.gov.au](http://www.humanrights.gov.au)

To order more publications from the Australian Human  
Rights Commission download a Publication Order Form at:  
[www.humanrights.gov.au/publications/index.html](http://www.humanrights.gov.au/publications/index.html)  
or call: (02) 9284 9600 fax: (02) 9284 9611  
or email: [publications@humanrights.gov.au](mailto:publications@humanrights.gov.au)

