



Australian
Human Rights
Commission

BA v

Commonwealth of

Australia (DIBP)

[2017] AusHRC 111

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

[2017] AusHRC 111

Report into arbitrary detention

Australian Human Rights Commission 2017



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Commission

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**Australian
Human Rights
Commission**

January 2017

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 BA against the Commonwealth of Australia, Department of Immigration and Border Protection (Department).

I have found the Department's failure, for a period of approximately three and a half years, to consider less restrictive alternatives to detention for Mr BA that were consistent with any risk he posed to security, and to consider referring Mr BA's case to the Minister for the exercise of his discretionary powers either under section 195A or section 197AB of the *Migration Act 1958* (Cth) (Migration Act), to be arbitrary and inconsistent with Mr BA's right to liberty under article 9(1) of the *International Covenant on Civil and Political Rights*.

In light of my findings I recommended that the Commonwealth pay to Mr BA appropriate compensation in relation to this period of arbitrary detention.

The Department provided a response to my findings and recommendations on 21 July 2016. I have set out the Department's response in part 7 of this report.

I enclose a copy of my report.

Yours sincerely,

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

Gillian Triggs
President
Australian Human Rights Commission

Australian Human Rights Commission

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1 Introduction

1. The Australian Human Rights Commission has conducted an inquiry into a complaint by Mr BA against the Commonwealth of Australia (Department of Immigration and Border Protection), alleging a breach of his human rights. Namely, the right recognised by article 9 of the *International Covenant on Civil and Political Rights* (ICCPR).
2. In order to protect the privacy and human rights of the complainant, I have made directions that his identity not be disclosed in accordance with s 14(2) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act). For the purposes of this report the complainant has been given the pseudonym ‘BA’.
3. This inquiry has been undertaken pursuant to section 11(1)(f) of the AHRC Act.
4. This is a report, pursuant to section 11(1)(f)(ii) of the AHRC Act setting out the findings of the Commission in relation to Mr BA’s complaint.

2 Summary of findings and recommendations

5. As a result of conducting this inquiry, I have found the Department’s failure, for a period of approximately three and a half years, to consider less restrictive alternatives to detention for Mr BA that were consistent with any risk he posed to security, and to consider referring Mr BA’s case to the Minister for the exercise of his discretionary powers either under section 195A or section 197AB of the *Migration Act 1958* (Cth) (Migration Act), to be arbitrary and inconsistent with Mr BA’s right to liberty under article 9(1) of the ICCPR.
6. In light of this finding, I recommend that the Commonwealth pay an appropriate amount of compensation to Mr BA for his period of arbitrary detention, in accordance with the principles outlined in part 6.2 below.

3 Background

7. Mr BA is a national of Sri Lanka who arrived on Christmas Island as an undocumented maritime arrival on 5 November 2012. He was detained on Christmas Island pursuant to section 189(3) of the Migration Act.
8. On 2 December 2012, Mr BA was transferred to the mainland, and was thereafter detained pursuant to section 189(1) of the Migration Act. He was detained at Wickham Point Alternative Place of Detention.
9. On 12 December 2012, Mr BA was found to have *prima facie* claims to engage Australia’s protection obligations and was ‘screened in’ to the refugee status determination process.

10. As Mr BA arrived in Australia after 13 August 2012, he was subject to regional processing arrangements and the Commonwealth's 'no advantage policy'. The policy provided that all asylum seekers who arrived by boat after 13 August 2012 were liable to be transferred to a regional processing centre to have their claims for refugee status assessed.
11. Mr BA was not transferred to a regional processing centre.
12. On 13 August 2015, the Minister for Immigration and Border Protection (Minister) agreed to lift the bar under subsection 46A(2) of the Migration Act in relation to Mr BA, to allow him to make a visa application. The Minister's decision to lift the bar noted that Mr BA, would be processed under the Fast Track Assessment Process.
13. On 22 April 2016, Mr BA applied for a Safe Haven Enterprise visa (SHEV). He was interviewed in relation to his SHEV application on 27 April 2016.
14. On 23 August 2016, Mr BA was granted a SHEV.

4 Legislative Framework

4.1 Functions of the Commission

15. Section 11(1) of the AHRC Act identifies the functions of the Commission. Relevantly, section 11(1)(f) gives the Commission the following functions:
 - to inquire into any act or practice that may be inconsistent with or contrary to any human right, and:
 - (i) where the Commission considers it appropriate to do so – to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement – to report to the Minister in relation to the inquiry.
16. 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 or practice is inconsistent with or contrary to any human right.

4.2 What is a 'human right'?

17. The rights and freedoms recognised by the ICCPR are 'human rights' within the meaning of the AHRC Act.¹

18. 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.

19. 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;²
- (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;³
- (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;⁴ and
- (d) detention should not continue beyond the period for which a State party can provide appropriate justification.⁵

20. In *Van Alphen v The Netherlands* the UN 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.⁶

21. 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.⁷

4.3 What is an 'act' or 'practice'?

22. The terms 'act' and 'practice' are defined in section 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.

23. Section 3(3) of the AHRC Act provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.

24. The functions of the Commission identified in section 11(1)(f) of the AHRC Act are only engaged where the act complained of is not one required by law to be taken;⁸ that is, where the relevant act or practice is within the discretion of the Commonwealth, its officers or agents.

5 Assessment

5.1 Act or practice of the Commonwealth

25. From 5 November 2012 to 1 December 2012, Mr BA was detained by the Commonwealth pursuant to section 189(3) of the Migration Act. From 2 December 2012 onwards he has been detained pursuant to section 189(1) of the Migration Act.

26. While these provisions require the detention of unlawful non-citizens, there are a number of powers that the Minister could have exercised so that Mr BA was detained in a less restrictive manner than in an immigration detention centre.

27. The Minister could have granted him a visa. Under section 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 section 189 of the Migration Act.

28. The Minister could 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).

29. 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'.

30. Accordingly, the Minister could have granted a visa to Mr BA, made a residence determination in relation to him under section 197AB of the Migration Act or could have approved that Mr BA reside in a place other than an immigration detention centre. Further, it was open to the Minister to exercise the power conferred by section 197AB subject to additional conditions: see section 197AB(2)(b) of the Migration Act.

31. The Department has confirmed that it has not referred Mr BA's case to the Minister either under section 195A or section 197AB of the Migration Act, nor has it considered Mr BA's case against the Ministerial Guidelines for the exercise of those discretionary powers. I find that the failure by the Department to consider less restrictive alternatives to detention for Mr BA, and to consider referring Mr BA's case to the Minister for the exercise of his discretionary powers constitutes an 'act' within the definition of section 3 of the AHRC Act.

5.2 Inconsistent with or contrary to human rights

32. Mr BA has been detained in immigration detention centres for approximately three and a half years, since arriving on Christmas Island on 5 November 2012.
33. Under international law, to avoid being arbitrary, detention must be necessary and proportionate to a legitimate aim of the Commonwealth.⁹
34. In its General Comment No. 35, published 28 October 2014, the United Nations Human Rights Committee makes the following comments about immigration detention:

Detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. 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. To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security. The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. Decisions regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health. Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons. The inability of a State party to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.¹⁰

35. In Mr BA's case, it is necessary to consider whether his prolonged detention in closed detention facilities could be justified as reasonable, necessary and proportionate on the basis of particular reasons specific to him, and in light of the available alternatives to closed detention.

(a) *Department's consideration of Mr BA's case under sections 195A and 197AB of the Migration Act*

36. By email dated 15 January 2016, the Department confirmed that during Mr BA's entire period of detention it has not assessed his case against the Guidelines for the exercise of the Minister's powers to make a residence determination under section 197AB of the Migration Act and has not referred Mr BA's case to the Minister for consideration of community detention. The Department also confirmed that it has not referred his case to the Minister under section 195A of the Migration Act, for the consideration of a visa grant.
37. Documents provided by the Department indicate that some consideration was given in 2013 and 2014 as to whether Mr BA may be considered for referral to the Minister for the grant of a bridging visa.

38. In case reviews dated 14 May 2013 and 19 July 2013 it is stated that:

Offshore entry persons who do not pose a risk to the Australian community are progressively being considered by the Minister for grant of a Bridging Visa E. The client's suitability for a Bridging Visa remains under assessment.

39. On 21 January 2014, Mr BA's case was raised within the Department for possible Bridging visa consideration and referral to the Minister. In heavily redacted email correspondence provided to the Commission, a Senior Case Manager at Curtin immigration detention centre raised Mr BA's case with the 'IMA section 195A Team'. The Senior Case Manager stated:

Hi IMA s195A Team

[Redacted paragraphs]

Given this detainee has been screened in [redacted] can you please add him for consideration to the upcoming group AG if there are no other identified barriers. Apologies for short notice.

If you can please let us know if Mr [BA] has been added to the BE Group AG that would be great so that a case manager / DSRO can meet with him as soon as possible.

40. The 21 January 2014 email response from the IMA section 195A Team stated:

Okay, so there is comment about him having an offshore criminal record.

But, it may be that this is from when Entry Services were sending us concerns based on interviews without an assessment of risk.

We can investigate tomorrow.

[Redacted paragraphs].

I am sympathetic to your request due to the length of time the client has been in detention, and I am prepared for the team to spend some time tomorrow looking into whether he can be added.

[Redacted].

41. By email to the Commission dated 25 February 2016, the Department stated that while Mr BA's case was raised for possible Bridging visa consideration on 21 January 2014, 'this has not progressed as the Department is still awaiting the outcome of security and character checks'.

42. By letter dated 16 June 2016, the Department provided the following further information in relation to the security concerns:

During entry interview and again ... as part of visa processing Mr [BA] declared information that is relevant to national security. As such the information was shared with ASIO which resulted in national security concerns being raised in respect of Mr [BA]. This alert informs the Department that the issues raised must be resolved by ASIO before a visa can be granted.

(b) *Assessment*

43. Mr BA's entry interview took place in late 2012. I consider a delay of three and a half years in finalising security and character checks to be unacceptable. This is particularly so in circumstances where the Department has not conducted any individualised assessment of Mr BA's circumstances, including whether community based detention was appropriate and consistent with any risk he posed to security. The information the Department has recently provided relates only to issues that must be resolved by ASIO 'before a visa can be granted'. It says nothing about community based detention, or some other less restrictive form of detention than detention in an immigration detention facility.
44. The Department's case reviews indicate that there are no reported incidents involving Mr BA during his period of detention.
45. The Department's failure to consider less restrictive alternatives to detention for Mr BA is particularly concerning in circumstances where in December 2012 Mr BA was found to have *prima facie* claims to engage Australia's protection obligations and was 'screened in' to the refugee status determination process.
46. I find that the Department's failure to consider less restrictive alternatives to detention for Mr BA that were consistent with any risk Mr BA posed to security, and to consider referring Mr BA's case to the Minister for the exercise of his discretionary powers for a period of approximately three and a half years, is arbitrary and inconsistent with his right to liberty under article 9(1) of the ICCPR.

6 Recommendations

6.1 Power to make recommendations

47. 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.¹¹ The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.¹²
48. The Commission may also recommend:¹³
- (a) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice; and
 - (b) the taking of other action to remedy or reduce the loss or damage suffered by a person as a result of the act or practice.

6.2 Consideration of compensation

49. There is no judicial guidance dealing with the assessment of recommendations for financial compensation for breaches of human rights under the AHRC Act.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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).¹⁴
55. In the case of *Fernando v Commonwealth of Australia (No 5)*,¹⁵ 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*:¹⁶
- ...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.¹⁷
56. 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).¹⁸ In that case, at first instance,¹⁹ 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.

57. 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'.
58. 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.²⁰
59. On appeal, the New South Wales Court of Appeal 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'.²¹
60. 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,²² 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.²³ On appeal, the Full Federal Court noted that although 'the primary judge's assessment seems to us to be low', it was not so low as to indicate error.²⁴

6.3 Recommendation that compensation be paid

61. I have found Mr BA's detention, for a period of approximately three and a half years, to be arbitrary and inconsistent with his right to liberty under article 9(1) of the ICCPR.
62. I consider that the Commonwealth should pay to Mr BA an appropriate amount of compensation to reflect the loss of liberty caused by his detention, in line with the principles set out above.

7 The Department's response to my recommendations

63. On 29 June 2016, I provided a notice to the Department of Immigration and Border Protection under section 29(2) of the AHRC Act setting out my findings and recommendations in relation to the complaint dealt with in this report.
64. By letter dated 21 July 2016 the Department provided a response to my findings and recommendations. In this letter, the Department provided the following further information:

The Department would also like to advise the AHRC that on 11 July 2016, Mr [BA] was issued with a non-prejudicial security assessment and the Department is now progressing his application for a temporary protection visa. The Department will refer his case to the Minister for consideration of a bridging visa if appropriate.

65. The Department provided the following response to my findings and recommendations:

Response to Recommendation

The Department notes the findings of the AHRC in this case. However, the Department advises that it will not be taking any action in relation to this recommendation.

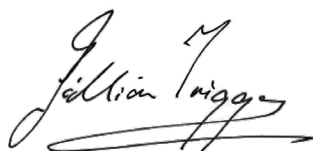
The Department maintains that Mr [BA]'s continued placement in a detention centre was appropriate, reasonable and justified in the individual circumstances of his case for the reasons set out in the Department's response to the notice of findings issued under section 27 of the AHRC Act on 16 June 2016.

Any monetary claim for compensation against the Commonwealth can only be considered where it is consistent with the *Legal Services Directions 2005*. The *Legal Service 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 [BA]'s detention was lawful and that the decisions and processes followed were appropriate having regard to his circumstances. On this basis, the Department is respectfully of the view that payment of compensation to Mr [BA] would not be appropriate in this case.

Although there are limited circumstances in which the Commonwealth may pay compensation on a discretionary basis, Resource Management Guide No. 409 generally limits 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 application of the Commonwealth legislation or policy. On the basis of the current information, the Department is not satisfied that there is a proper basis for the payment of discretionary compensation at this time.

66. The Department informed the Commission that on 23 August 2016 Mr BA was granted a Safe Haven Enterprise Visa.
67. I report accordingly to the Attorney-General.

A handwritten signature in black ink, reading "Gillian Triggs". The signature is written in a cursive style with a long horizontal flourish at the bottom.

Gillian Triggs
President
Australian Human Rights Commission
January 2017

- 1 The ICCPR is referred to in the definition of 'human rights' in section 3(1) of the AHRC Act.
- 2 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.
- 3 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].
- 4 *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* [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.
- 5 *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.
- 6 *Van Alphen v The Netherlands* [1990] UNHRC 22, UN Doc CCPR/C/39/D/305/1988.
- 7 *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.
- 8 See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.
- 9 *Van Alphen v The Netherlands* Communication No 305 of 1988, UN Doc CCPR/C/39/D/305/1988, *A v Australia* Communication No 560 of 1993, UN Doc CCPR/C/59/D/560/1993, *C v Australia* Communication No 900 of 1999, UN Doc CCPR/C/76/D/900/1999.
- 10 UN Human Rights Committee, General Comment 35 (2014) [18].
- 11 *Australian Human Rights Commission Act* s 29(2)(a).
- 12 *Australian Human Rights Commission Act* s 29(2)(b).
- 13 *Australian Human Rights Commission Act* s 29(2)(c).
- 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 [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* [2014] FCAFC 181 [113].

Further Information

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