Australian Human Rights Commission

Paul family v Commonwealth of Australia

[2013] AusHRC 63

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Paul family v Commonwealth of Australia (Department of Immigration and Citizenship)

Report into the best interests of the child and the right not to be subject to arbitrary or unlawful interference with the family

[2013] AusHRC 63

Australian
Human Rights
Commission

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April 2013

The Hon. Mark Dreyfus QC, MP
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 against the Commonwealth of Australia made by Mr Goutam Kumar Paul on behalf of himself, his wife Ms Debi Saha and their son Master Aishik Antar Paul.

I have found that a requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia, would not be in the best interests of Master Paul and would be inconsistent with the complainants' right not to be subject to arbitrary or unlawful interference with their family. These fundamental human rights are protected by Article 3 of the *Convention on the Rights of the Child* (CRC) and Articles 17(1) and 23(1) the *International Covenant on Civil and Political Rights* (ICCPR).

By letter dated 15 January 2013 the Department of Immigration and Citizenship provided the following response to my findings and recommendations.

> In line with the above findings and recommendations, the department is preparing another submission on the case for referral to the Minister in early 2013 so he can further consider whether to exercise his public interest powers in this case.

Please find enclosed a copy of my report.

Yours sincerely

Gillian Triggs
President
Australian Human Rights Commission

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 following an inquiry into a complaint against the Commonwealth of Australia by Mr Goutam Kumar Paul on behalf of himself, his wife Ms Debi Saha and their son Master Aishik Antar Paul alleging a breach of their human rights.

2. This inquiry has been undertaken pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).

3. As a result of this inquiry, I have found that a requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia, would not be in the best interests of Master Paul and would be inconsistent with the complainants' right not to be subject to arbitrary or unlawful interference with their family.

2 Complainants

4. The complainants are a family with one child living in Sydney. Mr Paul and Ms Saha are originally from Bangladesh and first came to Australia in 1996 and 1999 respectively.

5. On the material before the Commission it is unclear what employment Mr Paul and Ms Saha have engaged in and whether they are currently employed. The Department of Immigration and Citizenship (the department) notes that there is conflicting information regarding their integration and employment in Australia. It appears that Mr Paul has qualifications as a cook and Ms Saha has completed a course in Security Guarding. The department states that in 2009 it was advised by Mr Paul that they were both unable to work due to ongoing health concerns. Mr Paul suffers from rheumatoid arthritis and Ms Saha suffers from a severe form of psoriatic arthritis.

6. In 2010 the Administrative Appeals Tribunal (AAT) set aside a decision of the department to refuse Master Paul's application for Australian citizenship.[1] In its reasons for decision the AAT considered the situation of Mr Paul and Ms Saha. The AAT concluded that Mr Paul and Ms Saha were both 'substantially disabled'.[2] In relation to Ms Saha the AAT found that her extreme level of arthritis renders her 'incapable of carrying on any significant work and income earning activities'.[3] In relation to Mr Paul the AAT noted that while his arthritis is less severe it impedes his ability to find remunerative employment as a cook.

7. Master Aishik Antar Paul was born in Australia on 9 December 2000. He has undertaken all of his primary education in Australia. He is currently enrolled at Campsie Public School. When he turned 10 years old, he acquired Australian citizenship. The Principal at Campsie Public School described him as a good and hardworking student who has the potential to make a valuable contribution to the future Australian workforce and society.

3 Migration history

8. Mr Paul and Ms Saha have a complex migration history. Mr Paul first arrived in Australia in 1996 on a Tourist (Long Stay) visa. Ms Saha first arrived in Australia in 1999 on a Subclass 456 Business visa. Following the expiration of these initial entry visas Mr Paul and Ms Saha have held a series of Bridging visas.[4] They made unsuccessful applications for Protection visas and the rejections of their applications were affirmed by the Refugee Review Tribunal. Between 2002 and 2008 Mr Paul and Ms Saha commenced jointly and separately 18 applications for judicial review. Mr Paul and Ms Saha have made two unsuccessful applications for Ministerial intervention pursuant to s 417 of the *Migration Act 1958* (Cth) (Migration Act).

9. Mr Paul was an unlawful non-citizen for about two years in total. In June 2001 he was located by compliance officers of the department and detained at Villawood Immigration Detention Centre (VIDC) until November 2001 when he was released on a $20 000 security bond.

10. Master Paul acquired Australian citizenship on 4 June 2010 pursuant to subsection 21(5) of the *Australian Citizenship Act 2007* (Cth).

11. I understand that Mr Paul and Ms Saha each currently hold a Bridging Visa E.

4 Complaint

12. The core of the complaint of Mr Paul and Ms Saha is that the department has indicated that they are expected to leave Australia[5] and that the department may seek to remove them.[6] The department recognises that given that Master Paul is an Australian citizen there is no compellable power the department could rely on to remove him with his non-citizen parents.[7]

13. The complainants claim that the requirement that they leave Australia, or any act of seeking to remove them from Australia, would be inconsistent with or contrary to the following human rights provided for in the International Covenant on Civil and Political Rights (ICCPR)[8] and the Convention on the Rights of the Child (CRC):[9]

    - in all actions concerning children, the best interests of the child shall be a primary consideration (CRC article 3);
    - no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation (ICCPR article 17(1), CRC article 16(1));
    - the family is the natural and fundamental group unit of society and is entitled to protection by society and the State (ICCPR article 23(1)).

14. The complainants have asked the Minister to reconsider his decision not to intervene pursuant to s 417 of the Migration Act.

5 Conciliation

15. The Commonwealth indicated that it did not want to participate in a conciliation of this matter.

6 Relevant legal framework

16. The Commission has the function, pursuant to s 11(1)(f) of the AHRC Act, of inquiring into any act or practice that may be inconsistent with or contrary to any human right.

17. The Commission is required to perform that function when a complaint is made to it in writing alleging such an act or practice (s 20(1)(b)).

18. Section 8(6) of the AHRC Act requires that the functions of the Commission under s 11(1)(f) be performed by the President.

19. 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 under an enactment (which is in turn relevantly defined to include a Commonwealth enactment). Section 3(3)(a) provides that a reference to, or the doing of, an act includes a reference to a refusal or failure to do an act.

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. A relevant international instrument is an instrument in respect of which a declaration under s 47 is in force. One such instrument is the CRC.[10]

21. Article 3 of the CRC provides:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

22. Article 17(1) of the ICCPR provides:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

23. Article 23(1) of the ICCPR provides:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

24. Professor Manfred Nowak has noted that:[11]

> [T]he significance of Art. 23(1) lies in the protected existence of the institution "family", whereas the right to non-interference with family life is primarily guaranteed by Art. 17. However, this distinction is difficult to maintain in practice.

25. For the reasons set out in Australian Human Rights Commission Report 39 at [80]-[88], the Commission is of the view that in cases alleging a State's arbitrary interference with a person's family, it is appropriate to assess the alleged breach under article 17(1). If an act is assessed as breaching the right not to be subjected to an arbitrary interference with a person's family, it will usually follow that the breach is in addition to (or in conjunction with) a breach of article 23(1).

7 Findings

7.1 Relevant act or practice under the AHRC Act

26. In assessing this complaint, in my view the relevant act or practice is not the Minister's decision not to intervene under s 417 of the Migration Act, but rather the requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia.

7.2 Best interests of the child

27. In *Wan v Minister for Immigration & Multicultural Affairs*[12], the Full Court of the Federal Court considered the way in which a decision maker should assess the requirements of article 3 of the CRC when determining whether to make a decision which would lead to the child's parents being removed from Australia.

28. The starting point is to identify what the best interests of the child indicate that the decision maker should decide.[13] Although the department's submission to the Minister does not expressly identify the action that would be in the best interest of the child, my view is that it implicitly indicated that it would be in Master Paul's best interest for him to remain in Australia with his family. This seems to be the natural reading of the reference to the Minister intervening under s 417 together with the reference to other factors being outweighed by Master Paul's being an Australian citizen who was born and thus far completed all of his education in Australia.

29. An identification of what the best interests of Master Paul require, and the recognition by the decision maker of the need to treat such interests as a primary consideration, do not lead inexorably to a decision to adopt a course in conformity with those interests.[14]

30. It is legally open to a decision maker to depart from the best interests of Master Paul. However, in order to do so there are two requirements:

    (a) the decision maker must not treat any other factor as inherently more significant than the best interests of Master Paul; and

    (b) the strength of other relevant considerations must outweigh the consideration of the best interests of Master Paul, understood as a primary consideration.[15]

31. The Minister has the power under s 417 of the Migration Act to substitute for a decision of the Refugee Review Tribunal a decision that is more favourable to the applicant, if the Minister thinks that it is in the public interest to do so. The Minister is not required to (and in this case did not) provide written reasons for refusing to exercise his discretion under s 417. Therefore, it is unclear what factors he took into account in departing from the best interests of Master Paul.

32. However, in the department's written submission to the Commission in response to the present complaint, the department noted that:

> An assessment of the best interests of Master Paul under the CROC was put to the Minister. This assessment took into account the reasons provided by Mr Paul and Ms Saha in support of their request for the Minister to intervene, including Master Paul's education, development and integration into the Australian community and ability to adjust to life in either Bangladesh or India.

> Hence, the Minister was aware of the need to treat the best interests of the child as a primary consideration when contemplating action that would lead either to the child being separated from his parents (if his parents were removed and did not request that he depart with them) or living in a country that he was not familiar with (if his parents did choose to take him with them).
>
> When the Minister made his decision not to consider intervening in this case, he considered holistically the particular circumstances of this case and decided that the child's best interests were outweighed by other primary considerations relating to the integrity of the migration system and the parents' history on non-compliance with immigration requirements.

33. The department's submission indicates that the Minister's starting point was the best interests of Master Paul and a consideration of whether those interests were outweighed by other primary considerations relating to the integrity of the migration system and the parents' history on non-compliance with immigration requirements.

34. The second requirement of article 3 involves a balancing exercise.

35. The submission from the department to the Minister indicated that there were a number of other 'primary considerations' such as 'the community's expectations and current migration legislation concerning the orderly entry of people into Australia'.

36. The necessary balancing exercise was described in *Wan v MIMA* as follows:

> … the Tribunal might have concluded that the best interests of Mr Wan's children required that Mr Wan be granted the visa, but that the damage to their interests that would flow from his being refused the visa would be of only slight or moderate significance. If the Tribunal had also concluded that the expectations of the Australian community were that a non-citizen who engaged in conduct of the kind engaged in by Mr Wan would not be granted a visa, and that a decision to grant such a visa would be a most serious affront to the expectations of the Australian community, it would be entitled to conclude that, in the circumstances of the case, the best interests of the children were outweighed by the strength of community expectations.[16]

37. The department has identified a number of concerns with Mr Paul and Ms Saha including, an unwillingness to depart Australia, citizenship and identification concerns and a refusal to comply with security and character checking procedures.

38. It appears from the submission by the department that it had reached the view that the balancing exercise may result in an intervention by the Minister:[17]

> The department considers that intervention under section 417 may be appropriate in this case. The department has serious concerns about the disregard that Mr Paul and Ms Saha have shown for Australian immigration law, including their refusal to cooperate with the department, particularly with regard to the security and character checking procedures. However, these issues are to be outweighed by the fact that Aishik Paul is now an Australian citizen who was born and has thus far completed all of his education in Australia.

39. As noted earlier the department submits that the Minister decided that Master Paul's best interests were outweighed by other primary considerations relating to the integrity of the migration system and the parents' history of non-compliance with immigration requirements. Again, because there are no written reasons adopted by the Minister, it is not possible to determine how any other considerations were in fact taken into account. However, given the positive way in which the balancing exercise was conducted by the department in favour of the best interests of Master Paul and the fact that no additional consideration has been identified by the Minister for coming to the opposite conclusion, I consider that in conducting the balancing exercise the Minister does not appear to have given proper, genuine and realistic consideration to the child's best interests.

40. It is appropriate to consider the community's expectation that migration law will be complied with. However, in assessing the community's expectation in relation to migration outcomes, my view is that it is also necessary to weigh up the community's expectation about acts or practices that may result in an interference with a family that has been present in Australia for almost 13 years, and which may result in the separation of a 12 year old Australian citizen from his parents. I consider these issues in more detail in the following section.

41. When considering Master Paul's application for Australian citizenship, the AAT made a number of observations regarding the best interest of the child which are relevant to this inquiry. The AAT considered that if Master Paul was to remain in Australia, he would have a higher and healthier standard of life than on the Indian sub-continent where his parents, who have medical conditions, will be unable to properly look after him. The AAT found that the substantial cultural change and linguistic transition would make it difficult for Master Paul to adapt to Indian or Bangladeshi society. The AAT also relied on detailed country information which referred to the expense and practical unavailability of the medications required by Mr Paul and Ms Saha in Bangladesh or India and was concerned that Mr Paul and Ms Saha would be unable to adequately care for Master Paul in such circumstances. The AAT also referred to country information indicating a prevalence of child labour and other dangers to a young child growing up in either Bangladesh or India, being a possible danger to young children whose parents cannot look after them.

42. Based on the information currently available to me, I consider that in the present circumstances a requirement that Mr Paul and Ms Saha leave Australia, or any act by the Commonwealth of seeking to remove them from Australia, would be inconsistent with or contrary to article 3 of the CRC.

7.3 Arbitrary or unlawful interference with family

(a) Interference

43. The department submits that the Minister's decision not to intervene under s 417 does not adversely affect Master Paul's citizenship or his relationship with his parents. Master Paul will continue to hold Australian citizenship and is able to continue living with his parents as a family unit (although not in Australia, where Master Paul holds citizenship).

44. The department submits that the Minister's decision does not mean that Master Paul will be separated from his parents against their will since he is eligible for citizenship in either India or Bangladesh.

45. As discussed above, in my view the relevant act or practice is not the Minister's decision not to intervene under s 417, but rather the requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia. This is consistent with the way in which the relevant act was considered by the UN Human Rights Committee (UNHRC) in *Winata v Australia*[18] which dealt with a family in similar circumstances.

46. In this case the department appears to have recognised that the question of whether Mr Paul and Ms Saha are removed from Australia may lead to a different result than the outcome of the s 417 process. In the department's submission to the Minister it noted that if the Minister did not intervene to grant a substantive visa and if Mr Paul and Ms Saha did not make a request to the department that Master Paul be removed from Australia to Bangladesh or India with them, then Master Paul could not be removed. In such circumstances, the department indicated that it 'would consider other options to resolve the family's situation, taking into account the best interests of the child, and possible referral to you for reconsideration of this case'.[19] It was in the context of this advice that the Minister decided not to intervene.

47. In *Winata*, Australia proposed to return to their country of citizenship two Indonesian nationals who had overstayed their visas and remained illegally in Australia. The authors had a child in Australia who had attained Australian citizenship and was 13 at the time of their proposed return. The authors claimed that it would arbitrarily interfere with their family to return them to Indonesia because their son would either have to remain in Australia without the support and care of his parents or return to a country to which he had no cultural ties. He had never visited Indonesia and did not speak Indonesian.

48. The UNHRC held that:

> In the present case, the Committee considers that a decision of the State party to deport two parents and to compel the family to choose whether a 13-year old child, who has attained citizenship of the State party after living there 10 years, either remains alone in the State party or accompanies his parents is to be considered 'interference' with the family, at least in circumstances where, as here, substantial changes to long settled family life would follow in either case.[20]

49. In *Madafferi v Australia*, the UNHRC reiterated this principle holding that:

> In the present case, the Committee considers that a decision by the State party to deport the father of a family with four minor children and to compel the family to choose whether they should accompany him or stay in the State party is to be considered 'interference' with the family, at least in circumstances where, as here, substantial changes to long settled family life would follow in either case.[21]

50. In this case, there is evidence of a long settled family life in Australia. Mr Paul and Ms Saha have lived in Australia for about 16 and 12 years respectively. Master Paul was born in Australia and has lived his whole life here. I understand that he only speaks a small amount of Bangla. Character references provided indicate that the family has integrated into the Australian community. They actively participate in community activities, volunteer their time for fund raising events, and send their child to a local school.

51. I consider that a requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia, would constitute an interference with this family.

(b) Arbitrary or unlawful

52. An unlawful interference with a person's family is prohibited by article 17(1) of the ICCPR. A lawful interference with a person's family will be prohibited by article 17(1) if it is arbitrary.

53. In its General Comment on article 17(1), the UNHRC confirmed that a lawful interference with a person's family may be arbitrary, unless it is in accordance with the provisions, aims and objectives of the ICCPR and is reasonable in the particular circumstances.[22] In relation to the meaning of 'reasonableness', the UNHRC stated in *Toonen v Australia*:

> The Committee interprets the requirement of reasonableness to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.[23]

54. In this case, the department has correctly noted that State parties to the ICCPR may require persons unlawfully within their territory to leave. However, there are limits on the exercise of this power. The UNHRC in *Winata* held that:

> It is certainly unobjectionable under the Covenant that a State party may require, under its laws, the departure of persons who remain in its territory beyond limited duration permits. Nor is the fact that a child is born, or that by operation of law such a child receives citizenship either at birth or at a later time, sufficient of itself to make a proposed deportation of one or both parents arbitrary. Accordingly, there is significant scope for States parties to enforce their immigration policy and to require departure of unlawfully present persons. That discretion is, however, not unlimited and may come to be exercised arbitrarily in certain circumstances.[24]

55. A crucial element of the reasoning in *Winata* which led the UNHRC to the conclusion that removal would be arbitrary was the length of time that the family had been in Australia and the integration of the family into the Australian community. This reasoning was affirmed by the UNHRC in *Sahid v New Zealand*.[25] In those circumstances, although removal was lawful, it would be arbitrary unless justified by additional factors, beyond enforcement of immigration law.

56. In the present case, the only bases put forward as justifying the removal of Mr Paul and Ms Saha are the breaches of immigration law described earlier in this report. I am not aware of any additional factors, such as a risk to the community, public order or security, which may otherwise suggest that their removal would not be arbitrary, in the sense of being proportional to the end sought and being necessary in the circumstances. Bearing in mind their long period of residence in Australia and their integration into the Australian community, my view is that additional factors would be required in order to justify their removal from Australia.

57. For the reasons outlined above I consider that any act by the Commonwealth seeking to remove Mr Paul and Ms Saha from Australia would be an arbitrary interference with the family contrary to article 3 of the CRC and articles 17 and 23 of the ICCPR.

8 Conclusion and recommendations

58. I find that a requirement that Master Paul's parents leave Australia, or any act of seeking to remove them from Australia, would not be in the best interests of Master Paul and would be inconsistent with the complainants' right not to be subject to arbitrary or unlawful interference with their family. Such a requirement or act would be inconsistent with or contrary to article 3 of the CRC and articles 17 and 23 of the ICCPR.

59. 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.[26] The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.[27]

60. The Minister decided not to grant a substantive visa to the complainants, in the context of advice to him that if Mr Paul and Ms Saha declined to depart Australia voluntarily with their children then the department would consider referring the matter back to the Minister for reconsideration (see paragraph 46 above).

61. The complainants have indicated that they do not wish to depart Australia with their child.

62. The Procedures Advice Manual anticipates that the department may refer a matter back to the Minister for reconsideration of the use of his public interest powers in certain circumstances. In particular, where a matter raises 'unique or exceptional' circumstances. Unique or exceptional circumstances are defined to include:

- circumstances that may bring Australia's obligations as a party to the ICCPR into consideration;
- circumstances that may bring Australia's obligations as a party to the CRC into consideration; and
- strong compassionate circumstances such that a failure to recognise them would result in irreparable harm and continuing hardship to an Australian citizen or an Australian family unit (where at least one member of the family is an Australian citizen or Australian permanent resident).[28]

63. I recommend that the department refer the matter back to the Minister for further consideration of the use of his public interest powers. I further recommend that the Minister consider exercising his powers in a manner consistent with the findings set out in this report.

9 Department's response to recommendations

64. On 4 December 2012 I provided a notice to the department under s 29(2)(a) of the AHRC Act setting out my findings and recommendations in relation to the complaint.

65. I asked that the department advise within 14 days whether the Commonwealth has taken or is taking any action as a result of the findings in the notice so that I could include such details in my report in accordance with s 29(2)(e) of the AHRC Act.

66. By letter dated 15 January 2013 the department provided the following response to my findings and recommendations:

> In line with the above findings and recommendations, the department is preparing another submission on the case for referral to the Minister in early 2013 so he can further consider whether to exercise his public interest powers in this case.

67. I report accordingly to the Attorney-General.

Gillian Triggs
President
Australian Human Rights Commission

April 2013

1 The original decision of the AAT was appealed to the Federal Court and set aside by consent, on the ground that the Deputy President had erred in law by not treating the welfare of the child as a 'primary consideration' in accordance with Departmental policy instructions.
2 *Paul and Minister for Immigration and Citizenship* [2010] AATA 411 (4 June 2010), [26].
3 Ibid [16].
4 The department advise that between 6 July 2000 and 5 October 2011 Mr Paul has been granted a total of 43 Bridging E visas. Between 26 October 2006 and 5 October 2011 Ms Saha has been granted a total of 38 Bridging E visas.
5 Including by way of letter from the department to Mr Paul dated 19 March 2012.
6 Letter from the department to the Mr Paul dated 16 January 2012.
7 Submission from the department to the Minister CB2010/00287 dated 25 October 2010, p 2.
8 *International Covenant on Civil and Political Rights*, opened for signature 16/12/1966, 999 UNTS 171 (entered into force 23/03/1976 except Article 41 which came into force 28/03/1979), ratified 13/08/1980, except Article 41 which was ratified 28/1/1993.
9 *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3, (entered into force 2/09/1990) and ratified 17/12/1990.
10 *Human Rights and Equal Opportunity Commission Act 1986 – Declaration of the United Nations Convention on the Rights of the Child* dated 22 October 1992.
11 M Nowak, *UN Covenant on Civil and Political Rights CCPR Commentary* (2nd ed, 2005) 518.
12 (2001) 107 FCR 133.
13 *Wan v Minister for Immigration & Multicultural Affairs* (2001) 107 FCR 133 at [26] (the Court).
14 Ibid at [32] (the Court).
15 Ibid at [32] (the Court).
16 *Wan v Minister for Immigration & Multicultural Affairs* (2001) 107 FCR 133 at [33] (the Court).
17 Submission from the department to the Minister CB2010/00287 dated 25 October 2010, p 15.
18 *Hendrick Winata and So Lan Li v. Australia*, CCPR/C/72/D/930/2000, UN Human Rights Committee (HRC), 16 August 2001.
19 Submission from the department to the Minister CB2010/00287 dated 25 October 2010, p 15.
20 *Hendrick Winata and So Lan Li v. Australia*, CCPR/C/72/D/930/2000, UN Human Rights Committee (HRC), 16 August 2001 at [7.2].
21 *Francesco Madafferi and Anna Maria Immacolata Madafferi v. Australia*, CCPR/C/81/D/1011/2001, UN Human Rights Committee (HRC), 26 August 2004at [9.8].
22 UNHRC, General Comment 16 (Twenty-third session, 1988), Compilation of General comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN doc HRI/GEN/1/Rev.6 (2003) 142 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation) [4].
23 Communication No. 488/1992 UN Doc CCPR/C/50/D/488/1992 at [8.3]. While this case concerned a breach of Article 17(1) in relation to privacy, these comments would apply equally to an arbitrary interference with family.
24 *Winata v Australia* [2001] UNHRC 24; UN Doc CCPR/C/72/D/930/2000 at [7.3].
25 *Sahid v New Zealand* [2003] UNHRC 14; UN Doc CCPR/C/77/D/893/1999 at [8.2].
26 AHRC Act s 29(2)(a).
27 AHRC Act s 29(2)(b).
28 PAM3: Act – Ministerial powers – Minister's guidelines on ministerial powers (s345, s351, s391, s417, s454 and s501J), sections 12 and 18.

Further Information

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