Australian Human Rights Commission

Mr SD v Commonwealth of Australia

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Mr SD v Commonwealth of Australia (Department of Immigration and Citizenship)

Report into arbitrary detention

[2012] AusHRC 52

Australian
Human Rights
Commission

Australian Human Rights Commission

June 2012

The Hon. Nicola Roxon MP
Attorney-General
Parliament House
Canberra ACT 2600

Dear Attorney

I attach my report of an inquiry into the complaint made pursuant to s 11(1)(f)(ii) of the *Australian Human Rights Commission Act 1986* (Cth) by Mr SD.

I have found that the acts and practices of the Commonwealth breached Mr SD's right not to be subject to arbitrary detention pursuant to article 9(1) of the *International Covenant on Civil and Political Rights.*

By letter dated 16 February 2012 the Department of Immigration and Citizenship provided its response to my findings and recommendations. I have set out the response of the Department in its entirety in part 10 of my report.

Yours sincerely

Catherine Branson
President
Australian Human Rights Commission

Australian Human Rights Commission

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1 Introduction

1. This is a report setting out the findings of the Australian Human Rights Commission and the reasons for those findings following an inquiry by the Commission into a complaint lodged by Mr SD that his treatment by the Commonwealth of Australia – Department of Immigration and Citizenship (DIAC) involved acts or practices inconsistent with or contrary to human rights.
2. I have directed that the complainant's identity be protected in accordance with section 14(2) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).

2 Summary of findings and recommendations

3. I find that the detention of Mr SD in Villawood Immigration Detention Centre (VIDC) was not necessary and was not proportionate to any legitimate aim of the Commonwealth.
4. The failure of the Minister to place Mr SD in community detention, or other less restrictive form of detention, after his visa was cancelled was inconsistent with the prohibition on arbitrary detention in article 9(1) of the International Covenant on Civil and Political Rights (ICCPR).
5. In light of my findings regarding the acts or practices of the Commonwealth I make the following recommendations:
    - That the Commonwealth pay financial compensation to Mr SD in the amount of $300 000.
    - That the Commonwealth provide a formal written apology to Mr SD for the breach of his human rights identified in this report.
    - That the Commonwealth change its policies and practices in the ways identified below.

3 Complaint by Mr SD

3.1 Background

6. On or about 20 May 2010 Mr SD lodged a complaint with the Commission. Mr SD claimed that if the Commonwealth returned him to the People's Republic of China (PRC) it would breach his right to life (article 6 ICCPR) and right to be free from torture or cruel, inhuman or degrading treatment or punishment (article 7 ICCPR). Mr SD also claimed that the Commonwealth arbitrarily interfered with his privacy by failing to prevent the Chinese consulate from asking him questions about his status as a Falun Gong practitioner (article 17 ICCPR).

7. I also considered whether Mr SD's detention in VIDC was arbitrary within the meaning of article 9 of the ICCPR.

8. By letter of 19 August 2011 I advised Mr SD that the Commission may decide not to continue to inquire into his allegations of breach of articles 6, 7 and 17 of the ICCPR. Mr SD was given the opportunity to provide further submissions in support of these aspects of his complaint but did not do so. By letter of 12 September 2011 I advised Mr SD that the Commission had decided pursuant to section 20(2)(c)(iii) of the AHRC Act not to continue to inquire into his allegations of breach of articles 6 and 7 of the ICCPR. Mr SD sought a remedy in relation to the subject matter of his allegations of breach of articles 6 and 7 of the ICCPR from the Refugee Review Tribunal (RRT) and the Commission was of the opinion that the subject matter of these allegations had been adequately dealt with. I also advised Mr SD that the Commission had decided pursuant to section 20(2)(c)(ii) of the AHRC Act not to continue to inquire into his allegation of breach of article 17 of the ICCPR because the Commission was of the opinion that it was lacking in substance.

9. On 5 October 2011 I advised the Commonwealth and Mr SD that it appeared that Mr SD's detention in VIDC was arbitrary within the meaning of article 9(1) of the ICCPR from the time that he was first placed in VIDC. The Commonwealth and Mr SD both had an opportunity to comment on my preliminary view.

10. My function in investigating complaints of breaches of human rights is not to determine whether the Commonwealth has acted consistently with Australian law, but whether the Commonwealth has acted consistently with the human rights defined and protected by the ICCPR.

11. It follows that the content and scope of the rights protected by the ICCPR should be interpreted and understood by reference to the text of the relevant articles of the international instruments and by international jurisprudence about their interpretation.

3.2 Findings of Fact

12. I consider the following statements about the circumstances which have given rise to the complaint to be uncontroversial.

13. Mr SD is a national of PRC who claims to be a Falun Gong practitioner. Mr SD entered Australia in August 2005 on a tourist visa. Mr SD applied for a Protection Visa and this application was refused in November 2005.

14. Mr SD exercised his appeal and review rights in relation to the decision of the Minister's delegate to refuse him a Protection Visa. On 2 February 2006 the RRT affirmed the decision not to grant Mr SD a Protection Visa. Mr SD sought judicial review of the decision of the RRT by the Federal Magistrates Court. On 18 April 2007 the Federal Magistrates Court dismissed Mr SD's application. Mr SD sought an extension of time in which to serve a Notice of Appeal from the decision of the Federal Magistrates Court. On 7 August 2007 the Federal Court dismissed Mr SD's application. Mr SD then sought special leave to appeal to the High Court. On 27 March 2008 special leave was refused.

15. Mr SD was granted a series of bridging visas after his application for a Protection visa was refused.

16. On or about 11 March 2010 Mr SD was provided with a Notice of Intention to Consider Cancellation (NOICC). The NOICC notes that Mr SD had breached the condition that he present a valid passport on four occasions.

17. On 11 March 2010 Mr SD's Bridging Visa was cancelled. In the NOICC, the decision maker notes that Mr SD breached the condition requiring him to present a valid passport. The NOICC also states that the International Organization for Migration (IOM) officer who accompanied him to the Chinese Consulate was of the view that Mr SD had actively attempted to sabotage his application for a travel document by providing information to the PRC consulate that was not requested. After Mr SD's visa was cancelled, he was placed in VIDC.

18. Mr SD lodged a number of requests for Ministerial intervention between May 2010 and August 2011.

19. On or about 24 August 2011 Mr SD was removed from Australia. Mr SD claims that his detention in VIDC was arbitrary.

4 The Commission's human rights inquiry function

20. Section 11(1)(f) of the AHRC Act gives the Commission the function of inquiring into any act or practice that may be inconsistent with or contrary to any human right.

21. Section 20(1)(b) of the AHRC Act requires the Commission to perform that function when a complaint is made to it in writing alleging such an act or practice.

4.1 The Commission can inquire into acts or practices of the Commonwealth

22. The expressions '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.

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

24. An 'act' or 'practice' only invokes the human rights complaints jurisdiction of the Commission where the relevant act or practice is within the discretion of the Commonwealth, its officers or agents.

25. As a judge of the Federal Court in *Secretary, Department of Defence v HREOC, Burgess & Ors* (Burgess),[1] I found that the Commission could not, in conducting its inquiry, disregard the legal obligations of the Secretary in exercising a statutory power. Therefore, if a law requires that the act or practice be done by or on behalf of the Commonwealth, its officers or agents, and there is no discretion involved, the act or practice done pursuant to that statutory provision will be outside the scope of the Commission's human rights inquiry jurisdiction.[2]

26. Mr SD was placed in VIDC on 11 March 2010 and left VIDC when he was removed from Australia on 24 August 2011.

27. Section 189(1) of the *Migration Act 1958* (Cth) requires the detention of unlawful non-citizens. Mr SD was an unlawful non-citizen and as such was required to be detained. However, the Migration Act did not require that Mr SD be detained in an immigration detention facility.

28. Section 197AB 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).

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. The Minister could have approved that Mr SD reside in a place other than VIDC or could have made a residence determination in relation to Mr SD under section 197AB of the Migration Act.

31. I consider that the Minister's failure to place Mr SD in a less restrictive form of detention constitutes an act under the AHRC Act.

4.2 'Human rights' relevant to this complaint

32. The expression 'human rights' is defined in s 3 of the AHRC Act and includes the rights and freedoms recognised in the ICCPR, which is set out in Schedule 2 to the AHRC Act.

33. Article 9(1) of the ICCPR is of particular relevance to this complaint. It states:

> 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.

34. The requirement that detention not be 'arbitrary' is separate and distinct from the requirement that detention be lawful.[3]

35. In order to avoid the characterisation of arbitrariness, detention should not continue beyond the period for which a state party can provide appropriate justification.[4]

36. In *A v Australia,*[5] the United Nations Human Rights Committee (UNHRC) said:

> [T]he Committee recalls that the notion of 'arbitrariness' must not be equated with 'against the law' but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context.[6]

37. The UNHRC further stated:

> . . .the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which justify detention for a period. Without such factors, detention may be considered arbitrary, even if entry was illegal.[7]

38. Moreover, detention which is otherwise lawful may still be arbitrary where there are less invasive means of achieving compliance with immigration policies.

39. In *C v Australia*[8] the UNHRC found that the detention was arbitrary because:

> [t]he State party has not demonstrated that, in the light of the author's particular circumstances, there were not less invasive means of achieving the same ends, that is to say, compliance with the State party's immigration policies, by, for example, the imposition of reporting obligations, sureties or other conditions which would take account of the author's deteriorating condition.[9]

5 Relevant legal framework

40. In forming my opinion as to whether the act or practice of the Commonwealth was inconsistent with or contrary to any human right I have carefully considered all of the information provided to me by both of the parties, including the submissions received from the parties in response to the preliminary view outlined in my letter of 5 October 2011.

6 Arbitrary Detention

41. Mr SD claims that his detention in VIDC was arbitrary within the meaning of article 9(1) of the ICCPR.

42. The Commonwealth claims that it considered placing Mr SD in a less restrictive form of detention but, having regard to Mr SD's age, gender, health, family situation, cultural background and behaviour during his engagement with DIAC, Mr SD did not meet the requirements for community detention.

43. Mr SD's Bridging Visa was cancelled because he breached the visa condition requiring that he present a valid passport. Further, I note that the NOICC in relation to Mr SD dated 11 March 2010 states that the IOM officer who accompanied Mr SD to the Chinese Consulate to assist him to obtain a travel document was of the view that Mr SD actively sought to sabotage his application for a travel document.

44. The Commonwealth was required to detain Mr SD in the least restrictive manner possible. Mr SD breached a condition of his Bridging Visa on a number of occasions and there is some material that tends to support a conclusion that he tried to frustrate the Commonwealth's attempts to return him to PRC. However, I do not consider that these factors meant that it was not possible for the Commonwealth to place Mr SD in community detention. If the Commonwealth was concerned that Mr SD would abscond, it could have imposed conditions requiring, for example, that he remain in regular contact with DIAC. I am not satisfied that Mr SD was such a flight risk, or indeed, posed such an unacceptable risk to the Australian community, that he could not have been held in community detention with any identified risks addressed through the imposition of conditions on his community detention.

45. The Commonwealth applied for a travel document for Mr SD on 23 March 2010. The Minister could have made a residence determination in relation to Mr SD whilst waiting for the Chinese Consulate to issue a travel document.

46. Based on all of the material before me, I am satisfied that Mr SD's detention in VIDC from 11 March 2010 until 24 August 2011 was arbitrary throughout this period.

7 Findings and recommendations

7.1 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.[10] The Commission may include in the notice any recommendation for preventing a repetition of the act or a continuation of the practice.[11]

48. 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.[12]

7.2 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.[13]

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.[14]

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 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).[15]

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

56. In *Taylor v Ruddock,*[16] the District Court at first instance considered the quantum of general damages for the plaintiff's loss of liberty for two periods of 161 days and 155 days, during which the plaintiff was in 'immigration detention' under the Migration Act but held in NSW prisons.

57. Although the award of the District Court was ultimately set aside by the High Court, it provides a useful indication of the calculation of damages for a person being unlawfully detained for a significant period of time.

58. The Court found that the plaintiff was unlawfully imprisoned for the whole of those periods and awarded him $50 000 for the first period of 161 days and $60 000 for the second period of 155 days. For a total period of 316 days wrongful imprisonment, the Court awarded a total of $110 000.

59. In awarding Mr Taylor $110 000 the District Court took into account the fact that Mr Taylor had a long criminal record and that this was not his first experience of a loss of liberty. He was also considered to be a person of low repute who would not have felt the disgrace and humiliation experienced by a person of good character in similar circumstances.[17]

60. On appeal, the Court of Appeal of New South Wales considered that the award was low but in the acceptable range.[18] The Court noted that 'as the term of imprisonment extends, the effect upon the person falsely imprisoned does progressively diminish'.[19]

61. In *Goldie v Commonwealth of Australia & Ors (No 2)*[20] Mr Goldie was awarded damages of $22 000 for false imprisonment being wrongful arrest and detention under the Migration Act for four days.

62. In *Spautz v Butterworth*[21] Mr Spautz was awarded $75 000 in damages for his wrongful imprisonment as a result of failing to pay a fine. Mr Spautz spent 56 days in prison and his damages award reflects the length of his incarceration. His time in prison included seven days in solitary confinement.

7.3 Recommendation that compensation be paid

63. I have found that Mr SD should have been placed in community detention rather than in VIDC. The failure to place Mr SD in community detention was inconsistent with his right not to be arbitrarily detained in breach of article 9(1) of the ICCPR.

64. I consider that the Commonwealth should pay to Mr SD an amount of compensation to reflect the loss of liberty caused by his detention at VIDC, rather than in community detention. Had Mr SD been transferred to community detention he would still have experienced some curtailment of his liberty and I have taken that into account when assessing compensation.

65. Assessing compensation in such circumstances is difficult and requires a degree of judgment. Mr SD was detained in VIDC from 11 March 2010 until 24 August 2011, a period of 522 days. Neither party has suggested that Mr SD's removal from Australia should have any impact on my assessment. Taking into account the guidance provided by the decisions referred to above I consider that payment in the amount of $300 000 is appropriate.

7.4 Apology

66. In addition to compensation, I consider that it would be appropriate for the Commonwealth to provide a formal written apology to Mr SD for the breach of his human rights. Apologies are important remedies for breaches of human rights. They, at least to some extent, alleviate the suffering of those who have been wronged.[22]

7.5 Policy

67. I consider that the guidelines relating to the Minister's residence determination power should be amended to provide that, unless DIAC is satisfied that a person in an immigration detention facility is a flight risk or poses an unacceptable risk to the Australian community that cannot be addressed through the imposition of conditions on community detention, DIAC should refer all persons to the Minister for consideration of making a residence determination. DIAC should make the referral as soon as practicable and in no circumstances later than 90 days after the individual is placed in an immigration detention facility.I report accordingly to the Attorney-General.

10 The Department's response to the recommendations

68. By letter dated 23 January 2012, the Commonwealth was requested to advise the Commission whether it has taken or is taking any action a result of my findings and recommendations and, if so, the nature of that action.

69. By letter dated 16 February 2012, the Commonwealth provided the following response to my notice of recommendations:

> **The Department's response on behalf of the Commonwealth of Australia to the Australian Human Rights Commission's (AHRC) summary of findings and recommendations with regard to Mr SD**
>
> 1. That the Commonwealth pay financial compensation to Mr SD in the amount of $300,000.
>
> The Department notes findings of the AHRC in this case. The Department reaffirms its position that Mr SD's detention, following the cancellation of his visa on 11 March 2010 until his removal from Australia in 24 August 2011, was lawful in accordance with the *Migration Act 1958* (the Act) and was not arbitrary.
>
> The Department wishes to re-emphasise the active steps that it took to ensure that Mr SD remained lawfully in the community while the consideration of his Ministerial intervention requests were underway after the merits and judicial review of his claims took place. The Department further emphasises the steps it took to ensure that Mr SD remained lawfully in the community so that Mr SD could organise his departure. The Department acknowledges and agrees with the AHRC's findings at paragraph 7:
>
> *'By letter of 19 August 2011 I advised Mr SD that the Commission may decide not to continue to inquire into his allegations of breach of articles 6, 7 and 17 of the ICCPR ..... By letter of 12 September 2011 I advised Mr SD that the Commission had decided pursuant to section 20(2)(c)(iii) of the AHRC Act not to continue to inquire into his allegations of breach of articles 6 and 7 of the ICCPR ... [as] the subject matter of these allegations had been adequately dealt with [by the Refugee Review Tribunal (RRT)].'*
>
> The Department notes that the RRT affirmed the Department's decision on 23 February 2006, and subsequent appeals of the RRT's decision to the Federal Magistrates Court, Full Federal Court and High Court were unsuccessful.
>
> The Department held, and continues to hold the belief that Mr SD's ongoing claims therefore were without merit, he had no lawful right to remain in Australia and actively sought to frustrate his departure.
>
> Mr SD did not, in accordance with the conditions on his Bridging visa E (WE-050), depart Australia from 8 May 2009 until his visa was cancelled on non-compliance grounds on 11 March 2010.
>
> Accordingly, the Department advises the Commission that there will be no action taken in regard to this recommendation.

2. That the Commonwealth provide a formal written apology to Mr SD for the breach of human rights identified in your report.

The Department disagrees with this recommendation.

The Department notes that Mr SD did not hold a valid visa to remain lawfully in Australia following the cancellation of his Bridging visa. Mr SD's visa was cancelled as a result of his continued non-compliance with the conditions requiring him to depart Australia (despite being provided sufficient opportunities to do so). Mr SD's immigration detention was therefore at all times lawful in accordance with section 189(1) of the Act.

With regard to Mr SD's placement while in immigration detention, a preliminary placement assessment was considered for Mr SD prior to his transfer to an Immigration Detention Centre (IDC). This assessment concluded that Mr SD did not meet the requirements for community detention or the grant of a Bridging visa, given his history of immigration non-compliance, failure to co-operate with the Department and his limited financial support. On this basis, the most suitable option for his placement was determined to be an IDC.

Following Mr SD's detention in March 2010, his case was referred for consideration against section 197 AB guidelines. Mr SD's case was subsequently assessed as not meeting the section 197 AB guidelines on 7 May 2010 due to his history of non-compliance and the fact that he was considered to be on a removal pathway. The Department remains of the view that Mr SD's detention was lawful.

The Department notes the AHRC's references to *A v Australia* in its finding. In relation to the references in *A v Australia,* the Department notes the text that has been extracted from that opinion. In this matter, for the period that Mr SD was in detention, the Department considers that it did have appropriate justification for his continued detention (bearing in mind the active steps the Department was engaged in to remove Mr SD as he had no lawful right to remain in Australia). The Department further maintains that the elements (extracted in paragraph 36 of the finding) were taken into account. The Department notes

' ... the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which justify detention for a period.

Without such factors, detention may be considered arbitrary, even ***if*** *entry was illegal.' (emphasis added)*

The Department notes that Mr SD's entered Australia lawfully so that is not a matter in contention. However, the *A v Australia* clearly states that a 'lack of cooperation; is an element which can justify detention for a period. Importantly, AHRC's findings at paragraph 43 acknowledge:

'Mr SD breached a condition of his Bridging visa on a number of occasions and there is some material that tends to support a conclusion that he tried to frustrate the Commonwealth's attempts to return him to the [People's Republic of China]

The Department considers, on the evidence available, that there is, in fact, considerable evidence to support the conclusion that Mr SD sought to frustrate the Department's attempts to remove him when clearly he had no lawful right to remain and having exhausted merits and judicial review avenues.

Given Mr SD had not sought to comply with the conditions attached to his visa (noting AHRC's use of the word 'frustrate' in relation to his activities), also lead to the considered opinion by the Department that he would not have complied with any reporting requirements in a community detention arrangement. The Department cannot agree with the conclusion that that Mr SD would have complied with reporting conditions *despite the fact* he had not complied, on many reported occasions with visa conditions.

On this basis, DIAC considers that Mr SD's detention, and decisions made about his detention, was justified and is not arbitrary.

The Department advises the Commission that there will be no action taken in regard to this recommendation.

3. That the Commonwealth change its policies and practices in the way identified in your report.

The Department notes your recommendation. The Department assures the Commission that Mr SD's case was assessed in line with the appropriate legislation and policies. During his detention, Mr SD's placement was reviewed in accordance with the Ministerial guidelines in place at that time. However, your comments will be taken into account in any future consideration that may be given by the Minister to amending the section 197 AB Ministerial guidelines.

The Department advises the Commission that there will be no action taken in regard to this recommendation.

70. I report accordingly to the Attorney-General.

Catherine Branson
President
Australian Human Rights Commission
June 2012

1 *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208.

2 Ibid.

3 In *Van Alphen v Netherlands,* the UNHRC said arbitrariness is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice or lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of a crime'. Communication No 305/1988, UN Doc CCPR/C/39/D/305/1988.

4 *C v Australia* Communication No 900/1999 UN Doc CCPR/C/76/D/900/1999 [8.2], *D and E v Australia* Communication No 1050/2002, UN Doc CCPR/C/87/D/1050/2002 [7.2]; *Omar Sharif Baban v Australia* Communication No 1014/2001, UN Doc CCPR/C/78/D/1014/2001 [7.2]; *Bahktiyari v Australia* Communication No 1069/2002, UN Doc CCPR/C/79/D/1069/2002 [9.2].

5 Communication No 560/1993, UN Doc CCPR/C/59/D/560/1993.

6 Ibid [9.2].

7 Ibid.

8 Communication No 900/1999, UN Doc CCPR/C/76/D/900/1999

9 Above n 4

10 AHRC Act s 29(2)(a).

11 AHRC Act s 29(2)(b).

12 AHRC Act s 29(2)(c).

13 *Peacock v The Commonwealth* (2000) 104 FCR 464, 483 (Wilcox J).

14 See *Hall v A & A Sheiban Pty Limited* (1989) 20 FCR 217, 239 (Lockhart J).

15 *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].

16 *Taylor v Ruddock* (unreported, 18 December 2002, NSW District Court (Murrell DCJ)).

17 Ibid [140].

18 *Ruddock v Taylor* (2003) 58 NSWLR 269.

19 Ibid.

20 [2004] FCA 156.

21 *Spautz v Butterworth & Anor* (1996) 41 NSWLR 1 (Clarke JA).

22 D Shelton, *Remedies in International Human Rights Law* (2000) 151.

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