



Australian  
Human Rights  
Commission

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# Mr Lawrence v Commonwealth of Australia

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## (Department of Home Affairs)

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**[2024] AusHRC 159**

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February 2024

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## **Mr Lawrence v Commonwealth of Australia (Department of Home Affairs)**

[2024] AusHRC 159

*Report into arbitrary interference with family and deprivation of the right to enter  
one's own country*

Australian Human Rights Commission 2024

The Hon Mark Dreyfus KC MP  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney

I have completed my report, pursuant to s 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act), into the human rights complaint of Mr Lawrence, alleging a breach of his human rights by the Department of Home Affairs (Department).

Mr Lawrence was a UK national who arrived in Australia at age six. He resided in Australia for over 50 years until 2018 when a delegate of the Minister cancelled his visa without notice while he was overseas in Thailand. Mr Lawrence sought revocation of the cancellation decision but was subjected to a series of delays. Mr Lawrence died while overseas, five years after the initial cancellation decision, with his immigration status still unresolved. In his complaint, Mr Lawrence stated that the separation and delays had a devastating impact on his family.

As a result of the inquiry, I find that both the delegate's decision to cancel Mr Lawrence's visa and the Department's delay in considering his request to revoke that decision, caused an arbitrary interference with his family contrary to articles 17 and 23 of the *International Covenant on Civil and Political Rights* (ICCPR). I also find that Mr Lawrence would not be able to establish that Australia was his 'own country' for the purposes of article 12(4) of the ICCPR and therefore these acts do not amount to a breach of that article.

On 16 October 2023, I provided the Department with a notice issued under s 29(2) of the AHRC Act setting out my findings and recommendations in this matter. The Department provided its response to my findings and recommendations on 19 January 2024. That response can be found in Part 8 of this report.

I enclose a copy of my report.

Yours sincerely,



Emeritus Professor Rosalind Croucher AM FAAL

**President**

Australian Human Rights Commission

March 2024

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## 1 Introduction to this inquiry

1. The Australian Human Rights Commission (Commission) has conducted an inquiry into a complaint by Mr Kevin Lawrence against the Commonwealth of Australia (Department of Home Affairs) (Department), alleging a breach of his human rights. This inquiry has been undertaken pursuant to section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act).
2. This is a complaint regarding deprivation of the right to enter one's own country, contrary to article 12(4) of the *International Covenant on Civil and Political Rights* (ICCPR), and arbitrary interference with family, contrary to articles 17 and 23.
3. The complainant is Mr Kevin Lawrence, a UK national who arrived in Australia at age six. He resided in Australia for over 50 years until 2018 when a delegate of the Minister cancelled his visa without notice whilst he was overseas in Thailand.
4. On 29 April 2023, Mr Lawrence suffered from a brain haemorrhage and died. At the time of his death, Mr Lawrence was still in Thailand with his immigration status unresolved. Mr Lawrence's family wish to pursue this complaint.
5. This report is issued pursuant to s 29(2) of the AHRC Act setting out the findings and recommendations of the Commission in relation to Mr Lawrence's complaint.

## 2 Summary of findings

6. As a result of the inquiry, I find that both the delegate's decision to cancel Mr Lawrence's visa and the Department's delay in considering his request to revoke that decision, caused an arbitrary interference with his family contrary to articles 17 and 23 of the ICCPR. I also find that Mr Lawrence would not be able to establish that Australia was his 'own country' for the purposes of article 12(4) of the ICCPR and therefore these acts do not amount to a breach of that article.

## 3 Background

7. Mr Lawrence was a 61-year-old British citizen who emigrated from the United Kingdom to Australia with his family in 1968, when he was six years old.
8. On 2 April 1988, he was granted a Transitional (permanent) visa. On

24 August 2015, he was granted a Resident Return (subclass 155) visa, which allowed him to reside permanently in Australia. At no stage has he applied for citizenship in Australia.

9. For over 50 years, Mr Lawrence lived in Australia, where he had a long-term partner, four children, two grandchildren, siblings, and elderly parents. He never returned to the UK and had no living relatives there. Mr Lawrence had strong community ties in Australia and had full-time employment as a Process Technician for 34 years.
10. On 8 February 2018, Mr Lawrence travelled to Thailand for a holiday. On 14 February 2018, whilst he was overseas, a delegate of the Minister decided to cancel Mr Lawrence's Resident Visa without notice. The decision was made in reliance upon s 128 of the *Migration Act 1958* (Migration Act), which provides the Minister with a discretionary power to cancel a person's visa, without notice, whilst that person is outside Australia. This is in contrast with the usual requirements under s 119 of the Act to provide the visa holder with notice of the proposed cancellation and an invitation to make relevant submissions. The power under s 128 may be exercised if the Minister or their delegate is satisfied that, among other things, there is a ground for cancelling the visa pursuant to s 116 of the Act, which sets out various circumstances under which such a visa can be cancelled. In Mr Lawrence's case, the delegate was satisfied that, pursuant to s 116(1)(e)(i) of the Migration Act, Mr Lawrence's 'presence in Australia is or may be a risk to the safety or good order of the Australian community'.<sup>1</sup>
11. The delegate's decision was predicated on the basis that Mr Lawrence was associated with a known Outlaw Motor Cycle Gang (OMCG) in Western Australia, namely the Rebels. In the 'Decision Record of Visa Cancellation' provided by the Department, the delegate sets out the grounds for cancellation as follows:
  - Mr Lawrence is a member of the Rebels OMCG;
  - This gang is known to engage in illegal activity;
  - WA Police consider Mr Lawrence to be a risk to the community, given his criminal history and links to the Rebels OMCG.<sup>2</sup>
12. The Delegate was satisfied that it was appropriate to cancel Mr Lawrence's visa without notice in accordance with s 128 of the Act, because 'if notified of the intention to consider cancellation, there is a risk the visa holder may respond by travelling to Australia in the belief it would be more difficult for his visa to be cancelled and for him to be removed from Australia'.<sup>3</sup>
13. Included with the delegate's decision was a letter from Western Australia

Police (WAPOL), which claimed that Mr Lawrence was the vice-president of the 'Freemantle Chapter' of the Rebels, and that he was considered a risk to the Australian community, given his criminal history. The delegate also considered a media article, 'Bibra Lake: Rebels Motorcycle Club promises no anarchy at new clubhouse', dated 21 February 2017, with a photo caption which describes Mr Lawrence as the Freemantle Chapter Vice-President.

14. In their decision, the delegate stated that 'there is no information before me to indicate the visa holder has any family members in Australia who may be affected by a decision to cancel the visa'.<sup>4</sup>
15. Together with the Delegate's decision, Mr Lawrence was provided with a 'notification of cancellation under s 128 of the Migration Act' dated 14 February 2018.<sup>5</sup> In accordance with the requirements of s 129 of the Migration Act, this document invited Mr Lawrence to show why he thought the ground for cancellation did not exist, or to give reasons why his visa should not be cancelled. Mr Lawrence was given a prescribed period of 28 calendar days from the time he was presumed to have received the notice in which to respond.
16. On 23 March 2018, well within the prescribed period, Mr Lawrence sought revocation of the cancellation decision (revocation request). Through his lawyer, Mr Lawrence disputed the accuracy of the WAPOL letter, and denied many of the facts and inferences therein. Specifically, he denied allegations that he was a senior member or vice president of the Rebels and that he had participated in aggressive or illegal activity.
17. Mr Lawrence claimed that his involvement with the Rebels was purely social in nature and that, since the visa cancellation, he had surrendered his membership and permanently retired from the club.
18. The revocation request also challenged the delegate's reliance upon Mr Lawrence's criminal history to support the conclusion that he posed a risk to the community. Mr Lawrence pointed out that the convictions recorded on his police certificate related to incidents from 20 years ago, prior to his involvement with the Rebels. Further, he argued that they were not objectively serious in nature.
19. The revocation request also highlighted that the cancellation decision made no reference to Mr Lawrence's immediate family or their personal circumstances.
20. Pursuant to s 131 of the Migration Act, after considering any response to the cancellation notice, the Minister is to revoke the cancellation if not satisfied that there was a ground for cancellation, or if satisfied that there is any other reason why it should be revoked. However, the Department



did not correspond with Mr Lawrence or his lawyer regarding the revocation request until an email sent on 25 June 2019 indicating that it was 'diligently processing' the revocation request. This was more than a year after Mr Lawrence's revocation request.

21. On 30 November 2020, more than two years after the revocation request, the Minister decided not to revoke the cancellation decision (Minister's decision). The Minister maintained that Mr Lawrence's association with the Rebels meant that his presence in Australia may be, or might be, a risk to the Australian community.<sup>6</sup>
22. On 31 December 2020, Mr Lawrence filed an application for judicial review of the Minister's decision in the Federal Court. That application was later transferred to the Federal Circuit and Family Court.
23. On 14 February 2021, Mr Lawrence's temporary ban from entering Australia ended. However, he was unable to apply for a new Resident Return visa from offshore in circumstances where his previous visa had been cancelled.
24. On 26 July 2021, Mr Lawrence made an application for a visitor visa, which was never processed.
25. On 4 August 2022, the Minister's decision was quashed by the Federal Circuit and Family Court. His Honour Judge Lucev made a finding that material jurisdictional error had been established and remitted the matter back to the Minister for determination.
26. On 29 April 2023, Mr Lawrence died. At the time of his death, Mr Lawrence was still in Thailand and his revocation request was still awaiting determination. The Department says that the revocation request was 'under active consideration' when Mr Lawrence died.
27. By the time of his death, Mr Lawrence had been separated from his family for five years. Mr Lawrence's family say that the separation had a devastating impact on him, as well as his partner, children, and parents. Mr Lawrence's family say that they continue to grieve his unexpected death, and struggle with the emotional, financial and logistical hardships created by the visa cancellation.

### **3.1 Functions of the Commission**

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

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

### **3.2 Scope of 'act' or 'practice'**

31. 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.
32. Section 3(3) provides that the reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act.
33. 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, that is, where the relevant act or practice is within the discretion of the Commonwealth.<sup>7</sup>

### **3.3 What is a human right?**

34. The phrase 'human rights' is defined by section 3(1) of the AHRC Act to include the rights and freedoms recognised in the ICCPR and the CRC.

## **4 Act or practice of the Commonwealth**

35. I consider the following acts of the Commonwealth as relevant to this inquiry:
- The decision by the delegate to cancel Mr Lawrence's visa under s 128 of the Migration Act (the delegate's decision).
  - The delay in considering the revocation request made by Mr Lawrence on 23 March 2018.

## **5 Arbitrary Interference with family**

36. Mr Lawrence claimed that the acts described above caused an arbitrary interference with his family in breach of articles 17(1) and 23(1) of the ICCPR.

### **5.1 Articles 17(1) and 23(1)**

37. 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.

38. 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.

39. Professor Manfred Nowak has noted that:

[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 article 17. However, this distinction is difficult to maintain in practice.

40. For the reasons set out in the Australian Human Rights Commission report, *Nguyen and Okoye v Commonwealth* [2007] AusHRC 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).

## 5.2 Family

41. The UN Human Rights Committee has confirmed on a number of occasions that 'family' is to be interpreted broadly.<sup>8</sup> Where a nation's laws and practices recognise a group of persons as a family, they are entitled to the protections in articles 17 and 23.<sup>9</sup> However, more than a formal familial relationship is required to demonstrate a family for the purposes of article 17(1). Some degree of effective family life or family connection must also be shown to exist.<sup>10</sup> For example, in *Balaguer Santacana v Spain*,<sup>11</sup> after acknowledging that the term 'family' must be interpreted broadly, the UN Human Rights Committee went on to say:

Some minimal requirements for the existence of a family are, however, necessary, such as life together, economic ties, a regular and intense relationship, etc.<sup>12</sup>

42. Mr Lawrence and his partner, Tahnee Prentice, were together for 25 years. They have three children, Lataya (16 years), Luke (14 years) and Linkin (11 years). Mr Lawrence also had an adult child, Alysha, with whom he was close. Mr Lawrence played an active role as grandfather to Alysha's two children. Her third child was due to be born in mid-2023.

43. Mr Lawrence's elderly parents and his siblings also live in Australia. Mr Lawrence maintained a close relationship with them.

44. Based on the above, I am satisfied that Mr Lawrence had a close connection with his partner and his children and grandchildren, and that their relationships are sufficient to constitute a 'family' for the purpose of article 17(1) of the ICCPR.

### 5.3 'Interference'

45. There is no clear guidance in the jurisprudence of the UN Human Rights Committee as to whether a particular threshold is required in establishing that an act or practice constitutes an 'interference' with a person's family. However, in relation to one communication, the UN Human Rights Committee appeared to accept that a 'considerable inconvenience' could suffice.<sup>13</sup>
46. Interpreting the word 'interference' using its ordinary meaning, as explained in the Commission report [2008] AusHRC 39,<sup>14</sup> I am satisfied that interference with the family is demonstrated by the simple fact that Mr Lawrence and his family were physically separated as a result of the decision to cancel Mr Lawrence's visa while he was overseas.

### 5.4 'Arbitrary'

47. In its General Comment on article 17, the UN Human Rights Committee confirmed that a lawful interference with a person's family may nevertheless be arbitrary, unless it is in accordance with the provisions, aims and objectives of the Covenant and is reasonable in the particular circumstances.<sup>15</sup>
48. It follows that the prohibition against arbitrary interference with family incorporates notions of reasonableness.<sup>16</sup> In relation to the meaning of reasonableness, the UN Human Rights Committee 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.<sup>17</sup>
49. While the *Toonen* case concerned a breach of article 17(1) in relation to the right of privacy, these comments would apply equally to an arbitrary interference with the family.
50. In *Deepan Budlakoti v Canada*, the United Nations Human Rights Committee stated that:

The relevant criteria for assessing whether or not the specific interference with family life can be objectively justified must be considered in the light,

on the one hand, of the significance of the State party's reasons for the removal of the person concerned, and on the other hand, the degree of hardship the family and its members would encounter as a consequence of such removal.<sup>18</sup>

## 5.5 Consideration

51. I find that the interference with Mr Lawrence's family life was disproportionate to the Department's objective, being the maintenance of 'the safety and good order of the Australian community'.<sup>19</sup> In response to my preliminary view, the Department stated that the delegate considered Mr Lawrence's extensive links to Australia, and gave substantial weight to the considerations in his favour, but decided nonetheless to cancel his visa due to his deemed risks to the Australian community.
52. I note that the Department justifies the cancellation decision by relying on Mr Lawrence's past criminal history and his association with the Rebels. His criminal convictions and sentencing outcomes are as follows:
- 16 December 1997 – Common Assault – Conditional Release Order 14 months and Recognizance \$1000;
  - 14 May 1999 – Assault Occasioning Bodily Harm – Fined \$1500;
  - 14 October 2011 - Exceed speed limit - Fined \$700;
  - 8 October 2014 – Breach of Surety Undertaking - Surety forfeited \$5000.<sup>20</sup>
53. I note that Mr Lawrence's criminal history is minimal, and long pre-dates his association with the Rebels. The convictions for assault relate to incidents from over 20 years ago, and 10 years prior to Mr Lawrence joining the Rebels. The sentencing outcomes for each of these convictions, namely a fine rather than a custodial sentence, reflect that neither offence was considered by the Court to be objectively serious. The remaining two offences are minor and unrelated to the Rebels.
54. During the Federal Circuit and Family Court proceedings, the Minister 'accepted the offences were historical and were not of the most serious types' and 'acknowledged the convictions were recorded prior to Mr Lawrence's involvement with the Rebels'.<sup>21</sup>
55. In response to my preliminary view, the Department acknowledged that Mr Lawrence 'did not have an extensive criminal history'.
56. I find that the Delegate erroneously attributed too much weight to these prior convictions when assessing the risk that Mr Lawrence poses to the Australian community.

57. As to Mr Lawrence's association with the Rebels, the Delegate first identified the Rebels as 'an established criminal group in Western Australia, involved in the sale and supply of prohibited drugs/criminal activity throughout the state of Western Australia'.<sup>22</sup> The Delegate then referred to the evidence from which he inferred that Mr Lawrence was an active member of the Rebels, being:
- An article from the Cockburn Gazette titled '*Bibra Lake: Rebels Motorcycle Club promises no anarchy at new clubhouse*', dated 2017, where Mr Lawrence is pictured with the notation 'Rebels Motorcycle Club Freemantle Chapter President Mark Rodgers and vice-president Kevin Lawrence'.
  - Letter from the Western Australia Police Force which states that Mr Lawrence is known to WA Police due to his longstanding membership with the Rebels, and that Mr Lawrence is understood to be the Rebels Freemantle Chapter Vice-President, and is reported to attend meetings and associate with gang members who are involved in serious criminal activity.<sup>23</sup>
58. Mr Lawrence said that he was a 'social member' of the Rebels from 2008, that his membership was 'benign' and that he was not engaged in criminal activities. He categorically denied being a senior member of the Rebels and claimed that the assertions made by WAPOL should not have been relied upon by the Delegate. The information provided by WAPOL did not assert that membership of the Rebels in Western Australia itself constituted a criminal offence.
59. I find that the cancellation decision was not based upon any specific, contemporary finding of criminal activity by Mr Lawrence, but rather a vague notion that Mr Lawrence's association with the Rebels was suggestive of criminal activity and risk to the community.
60. I acknowledge the jurisprudence which suggests that an administrative decision-maker can make a finding of criminal conduct in the absence of a conviction.<sup>24</sup> However, such a finding or consideration requires 'meticulous investigation and solid grounds', where the decision-maker must 'pay close attention to the probative relevance of the material'.<sup>25</sup> Further, the seriousness of such allegations and the gravity of consequences flowing from findings of such a nature being made must also be considered in assessing whether the allegation has been proved to the reasonable satisfaction of an administrative decision-maker.<sup>26</sup>
61. In Mr Lawrence's circumstances, the delegate made a decision based only on a suggestion of criminality by association and could not positively identify any specific criminal activity by him. Based on the material

provided by the Department in relation to the delegate's decision, I consider that his limited criminal history from more than 20 years ago and his membership of the Rebels were insufficient to demonstrate that he was a 'risk to the community'.

62. Although it is not relevant to the delegate's decision, I note that in the subsequent proceedings challenging the validity of the Minister's decision not to revoke the cancellation, the Federal Circuit and Family Court found that the Minister's reliance on later information from WAPOL to conclude that that Mr Lawrence had engaged in serious criminal activity was unreasonable.<sup>27</sup>
63. In response to my preliminary view, the Department relisted the material considered by the delegate when making the cancellation decision. In particular, the Department listed the WAPOL information pointing to Mr Lawrence's association with Rebels Members, general intelligence information regarding Rebels OMCG activity, and open-source information such as the media article. The Department's response did not convince me of any sufficient nexus between the information considered by the delegate and the conclusion that his presence posed an unacceptable risk to the safety and good order of Australia.
64. I am concerned that the Delegate's decision was made at a time when Mr Lawrence was outside of the country, avoiding the ordinary requirement to give Mr Lawrence any prior notice, and denying him the opportunity to make any submissions. I am not satisfied that the reasons given by the Delegate in their cancellation decision (set out at [11] above) are sufficient to justify this course of action, when the cancellation could have taken place upon his return to Australia.
65. I note the considerable hardship endured by Mr Lawrence's family as a result of the events. The cancellation decision, and the delayed consideration of the revocation request, had a severe impact on the mental health and wellbeing of Mr Lawrence's partner and their children. One of their sons has been formally diagnosed with emotional regulation challenges and suffers from an anger control problem. The other son has a moderate intellectual disability and global developmental delay. The children have struggled to cope with their father's absence.
66. At the time of the cancellation decision Mr Lawrence's partner, Tahnee, was immediately rendered a single parent of three young children. Mr Lawrence was the sole income earner for their family and was positively involved in their daily lives. The family reports that the emotional, financial, and logistical hardships have been severe, and that their lives have been devastated.
67. Given that the delegate claimed to have 'no information ... to indicate the visa holder has any family members in Australia who may be affected by a decision to cancel the visa',<sup>28</sup> it is clear that the devastating impacts upon

Mr Lawrence's family were not considered when deciding to cancel his visa. The decision gave no bearing to the best interests of the children and grandchildren, let alone making them a primary consideration. At the stage where the Minister considered revocation of the visa cancellation, he acknowledged that it would be in the best interests of the minor children in Mr Lawrence's life for the cancellation to be revoked, and gave significant weight to this consideration in his favour.<sup>29</sup> I can infer that it is likely that had the delegate turned their mind to this issue when initially considering the visa cancellation, they would have reached the same conclusion.

68. I find that the factors justifying the cancellation were not sufficiently cogent, persuasive or reliable in order to outweigh, and justify, the severe impact on the family.
69. The decision to cancel Mr Lawrence's visa, without notice and while he was out of the country, cannot be objectively justified given the nature of the assertions made in the decision, and the weakness of the evidence relied upon. Accordingly, I find that the cancellation decision was not a reasonable or proportionate response to the objective of protecting the Australian community, and it constituted an arbitrary interference with Mr Lawrence's family life contrary to articles 17(1) and 23(1).
70. In light of the significant interference with Mr Lawrence's rights, I am also concerned about the extreme delay in considering his revocation request. Mr Lawrence's application for revocation was made promptly following the cancellation decision, and yet it was not considered by the Minister for over two years.
71. In response to my preliminary view, the Department stated that it 'endeavours to process revocation requests as soon as practicable'. The Department noted that processing the request involved internal consultation, consideration of additional WAPOL material, review of all relevant material, and preparation of submissions. Whilst I appreciate that the Department receives many revocation requests and that processing them can be a complex process, the Department's response does not satisfy me that the delay was justified.
72. Considering that Mr Lawrence was effectively locked out of the country and separated from his family, I find that the delay in considering his revocation request was not necessary, reasonable or proportionate and thus also constituted an arbitrary interference with Mr Lawrence's rights.

## **6 Right to enter your own country**

73. Article 12(4) of the ICCPR states:



No one shall be arbitrarily deprived of the right to enter his own country.

74. The language of Article 12(4) involves consideration of the meaning of 'arbitrarily', and 'own country'.

## 6.1 'Arbitrarily'

75. In General Comment 27, the Human Rights Committee stated:

The reference to the concept of arbitrariness in this context is intended to emphasise that it applies to all state action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.<sup>30</sup>

76. In General Comment 35, which concerns arbitrary arrest and detention, the Human Rights Committee states that:

The notion of 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.<sup>31</sup>

77. This indicates that it is a very serious matter to deprive an individual of the right to enter his or her own country, and that compelling reasons would be required to demonstrate that such action is reasonable, necessary and proportionate in the circumstances.

## 6.2 'Own country'

78. In General Comment 27, the Human Rights Committee discussed the meaning of 'own country' as follows:

It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien ... the language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.<sup>32</sup>

79. There has been significant jurisprudence regarding the interpretation of the term. In *Toala v New Zealand* it was established that citizenship may

not be a decisive indicator of one's own country for the purposes of article 12(4), in the unusual circumstances of that case where four people were briefly deemed to be New Zealand citizens but did not have any real connection to the country.<sup>33</sup>

80. In *Stewart v Canada*, the author was a British citizen who emigrated to Canada at age seven. He lived his whole life in Canada and had two young children there. Following criminal convictions, he faced deportation back to the United Kingdom. The Committee found that whilst he had lived in Canada most of his life, he had never applied for Canadian nationality despite the pathways available to him. In finding that Mr Stewart could not identify Canada as his 'own country' the Committee concluded that:

Countries like Canada, which enable immigrants to become nationals after a reasonable period of residence, have a right to expect that such immigrants will in due course acquire all the rights and assume all the obligations that nationality entails. Individuals who do not take advantage of his opportunity and thus escape the obligations nationality imposes can be deemed to have opted to remain aliens in Canada.<sup>34</sup>

81. This strict interpretation of article 12(4) was followed in *Madafferi v Australia*, where the Committee recalled that 'a person who enters a State under the State's immigration laws, and subject to the conditions of those laws, cannot normally regard that State as his own country when he has not acquired its nationality and continues to retain the nationality of his country of origin'.<sup>35</sup>
82. The Human Rights Committee has since deviated from this strict interpretation of the wording, but only in cases with notably exceptional circumstances. In *Nystrom v Australia*,<sup>36</sup> the author immigrated to Australia when he was 25 days old. He had strong ties to Australia and no ties to Sweden and, importantly, believed that he was already an Australian citizen. Further, he had been in the care of the State who had not initiated any citizenship processes for him. In these circumstances, the Committee found that he had established that Australia was his 'own country' for the purposes of article 12(4), stating that 'there are factors other than nationality which may establish close and enduring connections between a person and a country ... consideration of such matters as long-standing residence, close personal and family ties and intentions to remain, as well as the absence of such ties elsewhere'.<sup>37</sup>
83. In *Warsame v Canada*,<sup>38</sup> the majority of the Human Rights Committee adopted a broader view of article 12(4) than in *Stewart*. The case concerned the prospective deportation of a Somali national due to his criminal record. The author had lived most of his life in Canada, did not have any proof of Somali citizenship, had difficulty speaking the language, and in fact had lived in Saudi Arabia (and not Somalia) before moving to

Canada.

84. While the Human Rights Committee found that he had established Canada as his 'own country', there was a substantial minority dissenting to this approach. In particular, Sir Nigel Rodney (with whom five other members of the Human Rights Committee agreed in separate opinions), stated:

As to Article 12, paragraph 4, the Committee gives the impression that it relies on General Comment 27 for its view that Canada is the author's own country. Certainly, the General Comment states that the scope of 'his own country' is broader than the concept of 'country of nationality'. What the committee overlooks is that all the examples given in the General Comment of the application of that broader concept are ones where the individual is deprived of any effective nationality. The instances offered by the General Comment are those relating to 'nationals of a country who have been stripped of their nationality in violation of international law'; 'individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them'; and 'stateless persons arbitrarily denied the right to acquire the nationality of the country of ... residence'. (General Comment 27, paragraph 20). None of the examples applies to the present case. Nor has the author sought to explain why he did not seek Canadian nationality, as implicitly suggested by the State party ... Accordingly, I am not convinced that article 12, paragraph 4, would be violated were the author to be sent to Somalia.

85. In *Deepan Budlakoti v Canada*,<sup>39</sup> the author was born in Canada and was subject to a deportation to India following criminal convictions. His parents had gained citizenship, he was raised and educated in Canada, and had no connection to any other country. Crucially, the State had issued him two passports which they later argued were in error. The Human Rights Committee accepted, given the particular circumstances of the case, that he had established that Canada was his 'own country' for the purposes of article 12(4).
86. In *Cayzer v Australia*,<sup>40</sup> the author was born in Scotland and moved to Australia in 1965 at the age of 5. He lived in Australia for over 50 years until his removal in 2017 following the Minister's decision to cancel his visa under s 501 of the Migration Act. The author claims to have become a citizen during a ceremony where he claimed allegiance in front of a Defence officer in 1981. He also voted in, and stood for, elections in Australia. None of these factors were found to have conferred citizenship upon the author.
87. The Human Rights Committee recalled its previous jurisprudence in cases where 'individual and highly specific circumstances'<sup>41</sup> allowed for a broader interpretation of the concept of one's 'own country' under article 12(4). However, the Committee found that there were no specific

circumstances sufficient to trigger such a broad interpretation and concluded that the author could not claim that Australia was his 'own country' for the purposes of article 12(4), despite his subjective belief that it was.

### **6.3 Consideration**

88. In light of the jurisprudence discussed above, I consider that Mr Lawrence has not successfully established that Australia was his 'own country' for the purposes of article 12(4). While the Human Rights Committee has taken a broader interpretation of the term 'own country' since *Stewart v Canada*, it seems that this has only been in cases with distinguishing circumstances. While the concept of a person's 'own country' is broader than the concept of 'nationality', Mr Lawrence has not demonstrated any extenuating or specific circumstances that would prompt the Human Rights Committee to deviate from the approach taken in *Cayzer v Australia*. Further, he has not explained why he had not obtained Australian citizenship despite the pathways available to him.
89. Given my view that Mr Lawrence has not established that Australia was his 'own country', I find that that the decision to cancel his visa could not be considered a violation of article 12(4). Accordingly, I do not need to consider whether the act would be considered 'arbitrary'.

## **7 Recommendations**

90. Where, after conducting an inquiry, the Commission finds that an act or practice engaged in by a respondent is inconsistent with or contrary to any human right, the Commission is required to serve notice on the respondent setting out its findings and reasons for those findings.<sup>42</sup> The Commission may include in the notice any recommendations for preventing a repetition of the act or a continuation of the practice.<sup>43</sup> The Commission may also recommend other action to remedy or reduce the loss or damage suffered by a person.<sup>44</sup>

### **7.1 Individual remedies**

91. In this case, a resident of Australia for over 50 years had his visa cancelled without any prior warning while he was overseas. Mr Lawrence sought a revocation within the required period of 28 days, but the Minister did not act on that request for more than 2 years. When the Minister did make a decision, it was quashed on judicial review, because the Minister unreasonably concluded that Mr Lawrence had engaged in serious criminal activity. A request by Mr Lawrence for a new visa had not been determined by the Department when he died, more than two years after

making the request, and more than 5 years after the cancellation of his visa that left him outside Australia and separated from his family.

92. Apologies are important remedies to address wrongful conduct, and I consider that they have particular importance as a mechanism to acknowledge and redress breaches of human rights. They can, at least to some extent, alleviate the suffering of those who have been wronged.<sup>45</sup>

### **Recommendation 1**

The Commission recommends that the Department issue an apology to Mr Lawrence's family acknowledging the hardship and distress caused by their separation from Mr Lawrence.

93. Recommendations for compensation are expressly contemplated in the AHRC Act.<sup>46</sup> In considering the assessment of a recommendation for compensation under section 35 of the AHRC Act (relating to discrimination matters under Part II, Division 4 of the AHRC Act), the Federal Court has indicated that tort principles for the assessment of damages should be applied.<sup>47</sup>
94. 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.

### **Recommendation 2**

The Commission recommends that the Commonwealth pay to Mr Lawrence's partner an appropriate amount of compensation to reflect the emotional distress, psychological impact, and practical hardship caused to her and her family as a result of being separated from Mr Lawrence since February 2018.

95. I note that, due to Mr Lawrence's death, any decision made by the Department to resolve his immigration status is no longer relevant. However, were Mr Lawrence still alive, the Commission would have recommended that the Department promptly finalise his application for a Return Resident visa.

## **7.2 Decision making in relation to visa cancellation**

96. The discretionary power under s 128 of the Migration Act allows the Minister or their delegate to cancel a person's visa without notice, whilst that person is outside Australia. Once the Minister or delegate is satisfied that there is a ground for cancellation under s 116 of the Act, they must also be satisfied that it is appropriate to cancel the visa without notice to the visa holder in accordance with Part 2 – Division 3 – Subdivision F of the Migration Act. This subdivision is intended to be used in

circumstances where there is a risk that a visa holder would respond to a notice by travelling to Australia in the belief that it would be more difficult for the person's visa to be cancelled and the person removed.

97. The current policy framework sets out that even if the Minister or delegate is satisfied that there are grounds to cancel under s 116 of the Act and that it is appropriate to cancel without notice, they still must use a residual discretion to consider whether the visa should be cancelled considering all the circumstances of the case. In exercising this residual discretion, the Minister or delegate is to consider the same matters, to the extent that they are relevant, that were considered when deciding to cancel the visa under s 116.
98. The current policy sets out that nothing prevents cancellation of a permanent visa under s 128 of the Act, 'provided delegates have turned their mind to the appropriateness of cancellation without notice and considered the relevant policy guidelines'.<sup>48</sup> The policy threshold is too low. It does not adequately reflect the serious consequences of excluding a permanent resident from Australia without notice, potentially for years at a time while they seek revocation of the decision or, in the case of Mr Lawrence, for the rest of his life without a final decision being made. The current threshold allows for the discretion to be exercised in cases where less extreme measures could be taken, and where procedural fairness and natural justice would be appropriate.

### **Recommendation 3**

The Commission recommends that the discretionary power to cancel a visa without notice, whilst the visa-holder is outside Australia, pursuant to s 128 of the Migration Act only be exercised as a measure of last resort in relation to permanent visas. In such cases, the Commission recommends that the decision maker must be also able to point to exceptional circumstances showing that cancellation is necessary and that the denial of natural justice is appropriate when considered against the permanent status of the visa holder and their ties to the Australian community. The Commission further recommends that the Department update its policy to reflect this higher threshold.

99. The initial decision by the Minister not to revoke the cancellation of Mr Lawrence's visa was made more than two years after his request for revocation. The Minister's decision was quashed in August 2022 and remitted for reconsideration, but no new decision had been made almost 10 months later when Mr Lawrence died. Given the errors identified in the initial decision and the significant delay by the time it came to court, the reconsideration should have been accorded a high priority by the Department.

#### **Recommendation 4**

The Commission recommends that when a decision not to revoke a s 128 cancellation has been quashed by a Court in judicial review proceedings and referred back to the Department for redetermination, that a high priority be given to that redetermination.

#### **Recommendation 5**

The Commission recommends that the Department review its resource allocation and procedures in order to decrease the processing time for revocation requests.

100. Pursuant to subsection 116(1)(e) of the Migration Act, the Minister may cancel a visa if he or she is satisfied that the presence of its holder in Australia 'is or may be, or would or might be', a risk to the health, safety or good order of the Australian community. The use of such speculative language creates a very low threshold for the identification of risk and the exercise of the power.
101. The provision was amended in 2014 to lower the threshold and allow the discretion to be exercised where there is a mere possibility that the person may or might be a risk, as well as when there is an actual demonstrated risk.<sup>49</sup>
102. The current policy framework allows for the provision to be interpreted very broadly. Specifically, the related policy explains that:

'May be' or 'Might be' introduce a deliberately lower standard of satisfaction than 'is' or 'would be'. This means that the cancellation ground exists if there is a possibility that the person may (or, upon their arrival, in Australia, might), be a risk, as well as if there is demonstrated to be an actual risk of harm. There does not need to be a direct, solid, or certain foundation before the power to cancel a visa can arise. It can arise on the possibility that some event occurred in the past.<sup>50</sup>
103. The broad language and low threshold allow for the identification of risk, and the quantification of that risk, to become a speculative assessment.

#### **Recommendation 6**

The Commission recommends that the Department's policy should be reviewed and amended to provide further clarification around the thresholds for a decision made under s 116(1)(e) of the Migration Act. Specifically, the Commission recommends that for the ground in s 116(1)(e) to be made out, the decision-maker must be able to clearly identify the purported risk, determine the likelihood of that risk eventuating, and produce probative supporting material.

**Recommendation 7**

The Commission recommends that the policy guidelines regarding s 116(1)(e) of the Migration Act should be updated to provide guidance on how a decision maker should rely on a visa-holder's criminal history. Specifically, the guidelines should set out the following:

- That less weight should be given to older, historical convictions;
- That spent convictions not be given any weight;
- That primary attention be given to the actual sentence imposed, rather than the maximum sentence available;
- That attention be given to the sentencing remarks about the degree of culpability and any mitigating factors.

104. It is clear from the delegate's cancellation decision that the interests of Mr Lawrence's family, and specifically his minor son, were not taken into account as a primary consideration.

**Recommendation 8**

The Commission recommends that the best interests of a minor child should always be a primary consideration by decision-makers exercising a discretion to cancel a visa.

## **8 The Department's response to my findings and recommendations**

105. On 16 October 2023, I provided the Department with a notice of my findings and recommendations.
106. On 19 January 2024, the Department provided the following response to my findings and recommendations:

The Department of Home Affairs (the department) values the role of the Australian Human Rights Commission (the Commission) to inquire into human rights complaints and acknowledges the findings identified in this report and the recommendations made by the President of the Commission.



### **Recommendation 1 - Disagree**

*The Commission recommends that the Department issue an apology to Mr Lawrence's family acknowledging the hardship and distress caused by their separation from Mr Lawrence.*

The Department disagrees with recommendation 1.

While the Department acknowledges the circumstances raised in the complaint, the Department does not consider it appropriate to issue an apology at this time.

### **Recommendation 2 - Disagree**

*The Commission recommends that the Commonwealth pay to Mr Lawrence's partner an appropriate amount of compensation to reflect the emotional distress, psychological impact, and practical hardship caused to her and her family as a result of being separated from Mr Lawrence since February 2018.*

The Department disagrees with recommendation 2.

The Commonwealth can only pay compensation to settle a monetary claim against the Department if there is a meaningful prospect of legal liability within the meaning of the Legal Services Directions 2017 and it would be within legal principle and practice to resolve this matter on those terms. As such, the Department is not in a position to pay compensation at this time.

### **Recommendation 3 - Partially Agree**

*The Commission recommends that the discretionary power to cancel a visa without notice, whilst the visa- holder is outside Australia, pursuant to s 128 of the Migration Act only be exercised as a measure of last resort in relation to permanent visas. In such cases, the Commission recommends that the decision maker must be also able to point to exceptional circumstances showing that cancellation is necessary and that the denial of natural justice is appropriate when considered against the permanent status of the visa holder and their ties to the Australian community. The Commission further recommends that the Department update its policy to reflect this higher threshold.*

The Department partially agrees with recommendation 3.

The visa cancellation framework serves as an important pillar within Australia's migration framework to protect the Australian community from the risks posed by non-citizens involved in criminal activity. The General Cancellations Procedural Instruction provides guidance for delegates who are considering exercising the discretion to cancel a visa under section 128 of the *Migration Act 1958* (the Act). To this end, it delivers guidance to delegates on matters that should be considered when deciding whether to cancel a visa under section 128 including, among other things, the degree of hardship that may be caused to the visa holder and family members including whether the visa holder or any family members are

likely to face financial, psychological, and emotional or any other hardship as a result of the cancellation decision. In particular, delegates must treat as a primary consideration the best interests of the children if there are children in Australia whose interests could be affected by the cancellation.

Cancellation of a permanent visa when a person is outside Australia is a serious matter and policy guidance provides if a delegate is considering whether to cancel a permanent visa, they should also take into account whether the visa holder has formed strong family, business or other ties in Australia. In that situation, appropriate weighting should be applied in favour of not cancelling.

With respect to natural justice, it should be noted that revocation of section 128 cancellation decisions can be requested by an individual and considered under section 131 of the Act.

The department will undertake a review of the procedural instruction with a view to strengthening elements of our policy guidance in accordance with the Commission's recommendations.

#### ***Recommendation 4 – Agree***

*The Commission recommends that when a decision not to revoke a s 128 cancellation has been quashed by a Court in judicial review proceedings and referred back to the Department for redetermination, that a high priority be given to that redetermination.*

The Department agrees with recommendation 4.

Generally, the Department affords the highest priority to matters referred back to the Department for re-determination as a result of judicial review proceedings, including when a decision not to revoke a section 128 cancellation has been quashed by a Court.

#### ***Recommendation 5 – Partially Agree***

*The Commission recommends that the Department review its resource allocation and procedures in order to decrease the processing time for revocation requests.*

The Department partially agrees to recommendation 5.

The Department recently reviewed its prioritisation framework. This framework prioritises the allocation of services (and therefore resources). Cases with exceptional risk factors or sensitivities are afforded the highest priority.

### **Recommendation 6 – Agree**

*The Commission recommends that the Department's policy should be reviewed and amended to provide further clarification around the thresholds for a decision made under s 116(1)(e) of the Migration Act.*

*Specifically, the Commission recommends that for the ground in s 116(1)(e) to be made out, the decision-maker must be able to clearly identify the purported risk, determine the likelihood of that risk eventuating, and produce probative supporting material.*

The Department agrees with recommendation 6.

The General Cancellations Procedural Instruction provides officers with guidance on the application of section 116(1)(e) and notes that for the ground to be made out, delegates need to articulate the specific details or particulars of the risk that the person's presence in Australia poses to the health, safety or good order of the Australian community (or a segment of the Australian community, or to the health or safety of an individual or individuals). Having identified the risk, the delegate must determine the risk's likelihood of eventuating.

The Procedural Instruction notes that 'may be' or 'might be' introduce a deliberately lower standard of satisfaction than 'is' or 'would be.' This means that the cancellation ground exists if there is a possibility that the person may (or, upon their arrival in Australia, might) be a risk, as well as if there is demonstrated to be an actual risk of harm. The Procedural Instruction notes that there does not need to be a direct, solid or certain foundation before the power to cancel a visa can arise. It can arise on the possibility that some event occurred in the past. The instruction also notes that if there is sufficient evidence to enliven the ground at section 116(1)(e), delegates should consider cancellation as soon as practicable.

The Department will undertake a review of procedural instruction with a view to strengthening elements of our policy guidance in accordance with the commission's recommendations.

### **Recommendation 7 – Partially Agree**

*The Commission recommends that the policy guidelines regarding s 116(1)(e) of the Migration Act should be updated to provide guidance on how a decision maker should rely on a visa-holder's criminal history.*

*Specifically, the guidelines should set out the following:*

- *That less weight should be given to older, historical convictions;*
- *That spent convictions not be given any weight;*
- *That primary attention be given to the actual sentence imposed, rather than the maximum sentence available;*

- *That attention be given to the sentencing remarks about the degree of culpability and any mitigating factors.*

The Department partially agrees to recommendation 7.

Current practice is that, as a general rule delegates will consider whether the visa holder presents a serious and imminent risk to the safety of the Australian community or individual within the community – this includes ascribing appropriate weightings. The Department will consider the provision of further guidance for weighting in our policy documents, noting the discretionary decision-making process.

Under section 85ZZH(d) of the Crimes Act 1914, the prohibitions on disclosing, or taking into account, information concerning spent convictions do not apply to a person who makes decisions under the Migration Act, for the purpose of making that decision. State and territory jurisdictions vary in their spent conviction schemes and other countries may have spent convictions schemes under which certain convictions may not need to be disclosed after a specified period of time. As such, it may be appropriate Departmental decision-makers have regard to information concerning spent convictions (where it is available) to aid consistency in decision-making.

***Recommendation 8 – Accepted and already addressed***

*The Commission recommends that the best interests of a minor child should always be a primary consideration by decision-makers exercising a discretion to cancel a visa.*

The Department accepts and has already addressed recommendation 8.

When considering whether to cancel a visa under sections 109, 116, 116(1AA), 128 and 140(2) of the Act, or whether to revoke a cancellation under section 131 of the Act, officers should take into account any relevant obligations arising under treaties to which Australia is a party. This includes the Convention on the Rights of the Child, with particular reference to Article 3.1 which requires that 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration'. This position is supported in the General Cancellations Procedural Instruction.

107. I report accordingly to the Attorney-General.



Emeritus Professor Rosalind Croucher AM FAAL  
**President**, Australian Human Rights Commission  
March 2024

## Endnotes

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- <sup>1</sup> *Migration Act 1958* (Cth) s 116(1)(e)(i).
- <sup>2</sup> Department of Home Affairs, *Decision Record of Visa Cancellation under section 128 of the Migration Act* (14 February 2018).
- <sup>3</sup> *Ibid.*
- <sup>4</sup> *Ibid.*
- <sup>5</sup> Department of Home Affairs, *Notification of Cancellation under Section 128 of the Migration Act* (14 February 2018).
- <sup>6</sup> *Lawrence v Minister for Home Affairs* [2022] FedCFamC2G 617, [27].
- <sup>7</sup> See *Secretary, Department of Defence v HREOC, Burgess & Ors* (1997) 78 FCR 208, where Branson J found that the Commission could not, in conducting its inquiry, disregard the legal obligations of the secretary in exercising a statutory power. Note in particular 212–215.
- <sup>8</sup> See, e.g., UN Human Rights Committee, *General Comment No 16: Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation)*, 32<sup>nd</sup> sess, UN Doc HRI/GEN/1/Rev.1 (8 April 1988) 21 [5]; UN Human Rights Committee, *General Comment 19 (Article 23: Protection of the Family, the Right to Marriage and Equality of the Spouses)*, 39<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev.1 (27 July 1990) 28 [2].
- <sup>9</sup> UN Human Rights Committee, *General Comment 19 (Article 23: Protection of the Family, the Right to Marriage and Equality of the Spouses)*, 39<sup>th</sup> sess, UN Doc HRI/GEN/1/Rev.1 (27 July 1990) 28 [2].
- <sup>10</sup> Sarah Joseph et al, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2<sup>nd</sup> ed, 2004) 589.
- <sup>11</sup> UN Human Rights Committee, *Views: Communication No 417/1990*, 51<sup>st</sup> sess, UN Doc CCPR/C/51/D/417/1990 (15 July 1994) (*Balaguer Santacana v Spain*).
- <sup>12</sup> *Ibid* [10.2]. See also UN Human Rights Committee, *Views: Communication No 68/1980*, 12<sup>th</sup> session, UN Doc CCPR/C/OP/1 27 (31 March 1981), where the UN Human Rights Committee did not accept that the author and her adopted daughter met the definition of ‘family’ because they had not lived together as a family except for a period of 2 years approximately 17 years prior.
- <sup>13</sup> UN Human Rights Committee, *Views: Communication No 35/1978*, 12<sup>th</sup> sess, UN Doc CCPR/C/OP/1, 67 [9.2(b)] (9 April 1981) (*Mauritian Women v Mauritius*).
- <sup>14</sup> Human Rights and Equal Opportunity Commission, *Nguyen and Okoye v Commonwealth (Department of Immigration and Multicultural Affairs) and GSL (Australia) Pty Ltd* [2008] AusHRC 39 (1 January 2008), at [95]-[97].
- <sup>15</sup> UN Human Rights Committee, *General Comment No 16: Article 17 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation)*, 32<sup>nd</sup> sess, UN Doc HRI/GEN/1/Rev.1 (8 April 1988) 21 [4].
- <sup>16</sup> Sarah Joseph et al, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (Oxford University Press, 2<sup>nd</sup> ed, 2004) 482-483.
- <sup>17</sup> UN Human Rights Committee, *Views: Communication No 488 of 1992*, 50<sup>th</sup> sess, UN Doc CCPR/C/D/488/1992 (31 March 1994) [8.3] (*Toonen v Australia*).
- <sup>18</sup> UN Human Rights Committee, *Views: Communication No 2264/2013*, 122<sup>nd</sup> sess, UN Doc CCPR/C/122/D/2264/2013 (6 April 2018) [9.6] (*Deepan Budlakoti v Canada*).
- <sup>19</sup> *Migration Act 1958* (Cth) s 116(1)(e)(i).
- <sup>20</sup> National Police Certificate (AFP Ref: 1558526PC) from Australian Federal Police, 17 April 2015.
- <sup>21</sup> *Lawrence v Minister for Home Affairs* [2022] FedCFamC2G 617, [31].

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- <sup>22</sup> Department of Home Affairs, *Decision Record of Visa Cancellation under section 128 of the Migration Act* (14 February 2018).
- <sup>23</sup> *Ibid.*
- <sup>24</sup> *Australian Communications and Media Authority v Today FM (Sydney) Pty Ltd* [2015] HCA 7; 225 CLR 352.
- <sup>25</sup> *FTZK v Minister for Immigration and Border Protection* [2014] HCA 26; (2014) 88 ALJR 754; (2014) 66 AAR 15; (2014) 310 ALR 1, [14].
- <sup>26</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336, 362 (Dixon J); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449, 449-450 (Mason CJ, Brennan, Deane and Gaudron JJ).
- <sup>27</sup> *Lawrence v Minister for Home Affairs* [2022] FedCFamC2G 617, [79].
- <sup>28</sup> Department of Home Affairs, *Decision Record of Visa Cancellation under section 128 of the Migration Act* (14 February 2018).
- <sup>29</sup> *Lawrence v Minister for Home Affairs* [2022] FedCFamC2G 617, [34], [57].
- <sup>30</sup> UN Human Rights Committee, *General Comment 27 (Article 12: Freedom of Movement)*, 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) [21].
- <sup>31</sup> UN Human Rights Committee, *General Comment 35 (Article 9: Liberty and security of person)*, 112<sup>th</sup> sess, UN Doc CCPR/C/GC/35 (16 December 2014) [12].
- <sup>32</sup> UN Human Rights Committee, *General Comment 27 (Article 12: Freedom of Movement)*, 67<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.9 (2 November 1999) [20].
- <sup>33</sup> UN Human Rights Committee, *Views: Communication No 675/1995*, 70<sup>th</sup> sess, UN Doc CCPR/C/63/D/675/1995 (10 July 1998) (*Toala v New Zealand*).
- <sup>34</sup> UN Human Rights Committee, *Views: Communication No 538/1993*, 58<sup>th</sup> sess, UN Doc CCPR/C/58/D/538/1993 (18 February 1993) (*Stewart v Canada*).
- <sup>35</sup> UN Human Rights Committee, *Views: Communication No 1011/2001*, 81<sup>st</sup> sess, UN Doc CCPR/C/81/D/1011/2001 (26 August 2004) [9.6] (*Madafferi v Australia*).
- <sup>36</sup> UN Human Rights Committee, *Views: Communication No 1557/2007*, 102<sup>nd</sup> sess, UN Doc CCPR/C/102/D/1557/2007 (18 July 2011) (*Nystrom v Australia*).
- <sup>37</sup> *Ibid.*, [7.4].
- <sup>38</sup> UN Human Rights Committee, *Views: Communication No 1959/2010*, 102<sup>nd</sup> sess, UN Doc CCPR/C/102/D/1959/2010 (21 July 2011) (*Jama Warsame v Canada*).
- <sup>39</sup> UN Human Rights Committee, *Views: Communication No 2264/2013*, 122<sup>nd</sup> sess, UN Doc CCPR/C/122/D/2264/2013 (6 April 2018) (*Deepan Budlakoti v Canada*).
- <sup>40</sup> UN Human Rights Committee, *Views: Communication No 2981/2017*, 135<sup>th</sup> sess, UN Doc CCPR/C/135/D/2981/2017 (25 July 2022) (*Cayzer v Australia*).
- <sup>41</sup> *Ibid.*, [8.4].
- <sup>42</sup> *Australian Human Rights Commission Act 1986* (Cth) s 29(2)(a) (*AHRC Act*).
- <sup>43</sup> *Ibid.*, s 29(2)(b).
- <sup>44</sup> *Ibid.*, s 29(2)(c).
- <sup>45</sup> Dinah Shelton, *Remedies in International Human Rights Law* (Oxford University Press, 2000) 151.
- <sup>46</sup> *AHRC Act*, s 29(2)(c).
- <sup>47</sup> *Peacock v The Commonwealth* (2000) 104 FCR 464, 483 (Wilcox J).
- <sup>48</sup> Department of Home Affairs (Cth), 'Pam3:Act- CCR- Cancellation- General Visa Cancellation powers (s109, s116, s128, s134B and s140)'.
- <sup>49</sup> Explanatory Memorandum, Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth) 24 [13]. This was confirmed in *Gong v MIBP* [2016] FCCA 561 [40].
- <sup>50</sup> Department of Home Affairs (Cth), 'Pam3:Act- CCR- Cancellation- General Visa Cancellation powers (s109, s116, s128, s134B and s140)'.