A (name deleted) v Australia:[1] A Milestone for Asylum Seekers

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Introduction

A milestone in the protection of the rights of asylum seekers in Australia was achieved on 30 April 1997, when the United Nations Human Rights Committee adopted its views in relation to a communication lodged in June 1993 on behalf of a Cambodian "boat person". The communication had been made under the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)[3], which provides a complaints mechanism for individuals who claim that their human rights have been violated by a State party to the ICCPR which has acceded to the First Optional Protocol.[4] The person, identified only as *A*, was held in detention by the Australian immigration authorities for more than four years from November 1989 until January 1994, pending the assessment of his claim for refugee status and subsequent judicial appeals. In a unanimous decision, the Committee found that the detention of *A* was arbitrary and in breach of Articles 9(1) and 9(4) of the ICCPR. The Committee also determined that, pursuant to Article 2(3), Australia must provide adequate compensation to *A* as a result of its breach of these provisions.

The decision represents the most authoritative pronouncement yet that the continuing policy of detention of asylum seekers by Australia is in breach of its obligations under

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1 *A (name deleted) v Australia*, Communication No. 560/1993, Human Rights Committee, 59th session, 24 March — 11 April 1997, UN Doc CCPR/C/59/D/560/1993 dated 30 April 1997, reported in (1997) 9(3) *International Journal of Refugee Law* at 506.

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3 Both the ICCPR and the First Optional Protocol were adopted and opened for signature and ratification and accession by General Assembly Resolution 2200 A (XXI) of 16 December 1966, and both entered into force on 23 March 1976. The ICCPR was ratified by Australia on 13 August 1980 and the First Optional Protocol came into effect for Australia on 25 December 1991.

4 See, generally, Charlesworth H "Australia's Accession to the First Optional Protocol to the International Covenant on Civil and Political Rights" (1991) 18 *MULR* 428.

the ICCPR, and comprehensively rejects the Australian Government's continuing insistence that the policy does not offend international human rights norms. On a broader level, the decision is significant as the second adverse finding against Australia under the First Optional Protocol, the first being the well-known case of *Toonen v Australia*5 relating to the Tasmanian "anti-gay" legislation.[6] The decision is also significant as the first finding specifically against the conduct of Australia's Federal authorities, the *Toonen* communication relating primarily to Australia's failure to deal with legislation enacted by the State of Tasmania.

This case note traces the factual background which gave rise to the communication, the various stages of the communication itself, and concludes with a brief comment on the significance of the Committee's findings.

Background facts

Arrival and lodgement of application for refugee status

A was one of 26 Cambodian nationals who arrived in Australia on 25 November 1989 on a boat later code-named the *Pender Bay* by the Department of Immigration. The *Pender Bay* had been detected by Coastwatch and escorted to Broome, Western Australia, and then to Willie Creek — about 40 kilometres along the coast —where the occupants were taken into custody by Departmental officers. At Willie Creek the detainees filled out application forms indicating that they wished to seek refugee status in Australia. The forms were filled out with the assistance of an interpreter, but no legal adviser was made available. The forms did, however, contain a paragraph advising applicants that they may seek the assistance of a lawyer, and *A* had signed the form indicating that it had been read to him and that he understood its contents.

Villawood Detention Centre

On 13 December 1989 the *Pender Bay* detainees were flown to the Villawood Detention Centre in Sydney, and on 19 June 1990, *A*'s application for refugee status was rejected by the then Determination of Refugee Status Committee (DORS Committee), although the decision was not communicated to *A*. Following concerns raised by community groups with the then Immigration Minister, Mr Gerry Hand, about the processing of the refugee claims of the detainees, the New South Wales

5 *Toonen v Australia*, Communication No. 488/1992.

6 See Joseph S "Gay rights under the ICCPR — commentary on *Toonen v Australia*" (1994) 13(2) *University of Tasmania LR* 392.

Legal Aid Commission (NSWLAC) took up their cases. In September 1990, almost a year after his arrival in Australia, *A* had his first contact with a legal adviser when he was visited by the NSWLAC in Villawood. After further submissions were filed by NSWLAC, *A*'s application was again rejected on 15 May 1991. Five days later the detainees were told of the rejections and — with no notice and considerable heavy-handedness on the part of the detention centre guards, including the use of handcuffs — they were forcibly removed from Villawood to the Northern Territory.

Curragundi and Berrima camps

Upon arrival in the Northern Territory, the detainees were initially held at Curragundi Camp, a former scout camp about 85 kilometres outside Darwin described by the Human Rights and Equal Opportunity Commission as being "... a totally unacceptable site for a refugee detention centre."[7] Despite having lost contact with NSWLAC, which had not been warned of their impending removal, the detainees were assisted at Curragundi by volunteer lawyers in conjunction with the Northern Territory Legal Aid Commission (NTLAC), which lodged a request for internal review of the decisions to refuse their refugee claims on 11 June 1991. On 6 August 1991 the detainees were moved to Berrima Camp, closer to Darwin, and on 21 October 1991 they were again transferred without notice to their legal advisers to the newly opened Port Hedland detention centre in the far north-west of Western Australia.

Port Hedland Detention Centre

On 5 December 1991 the Refugee Status Review Committee (RSRC) — which by then had replaced the DORS Committee — rejected all of the applications for refugee status from the *Pender Bay* detainees; however, as they had by now lost contact with their Darwin legal representatives, they were not informed of these decisions until letters dated 22 January 1992 were transmitted to NTLAC. On 29 January 1992, NTLAC requested the Minister for Immigration to reconsider the decisions to refuse the applications, which was effectively the final stage in the administrative processing of the claims. This was supplemented on 3 March 1992 with a further submission from the Refugee Council of Australia (RCOA), which had by then been contracted by the Department of Immigration to act on behalf of the detainees in Port Hedland.

Federal Court proceedings

On 6 April 1992 — over three years after their arrival — the *Pender Bay* detainees

7 HREOC, *Report on the Detention of Asylum Seekers*, 10 March 1992 at 5.

were all advised that their applications had been finally refused by the Minister. The RCOA thereupon sought an undertaking from the Department of Immigration that none of the detainees would be deported until they had a chance to consider challenging the decision in the Federal Court of Australia, and when the Department refused such an undertaking, the matter was referred to the NTLAC which lodged an Application for Review of the decision with the Federal Court under the *Administrative Decisions (Judicial Review) Act* 1975 (Cth), and an injunction was obtained to prevent their deportation.

On 13 April 1992 the Minister for Immigration ordered that the decision to reject the detainees be withdrawn, due to an unspecified "defect" in the decision-making process. This caused the Federal Court proceedings to be abandoned; however, an application seeking release of the detainees was set down before the Federal Court on 7 May 1992.

On 5 May 1992, the Australian Parliament passed *Migration Legislation Amendment Act* 1992, which amended the *Migration Act* 1958 (Cth) by inserting a new Division 4B,[8] effectively defining all unauthorised boat people as "designated persons" to be kept in immigration detention unless granted a visa or removed from Australia.[9]

High Court proceedings

On 22 May 1992, with the assistance of lawyers acting on a *pro bono* basis, the *Pender Bay* detainees instituted proceedings in the High Court of Australia seeking a declaration that the new detention provisions were invalid, and on 8 December 1992 the High Court dismissed the majority of the applications,[10] thereby ensuring that the detainees would remain in custody.

Further proceedings and release

Meanwhile, as a result of the abandonment of the previous Federal Court proceedings relating to the rejection of his claim, *A*'s application for refugee status had been referred back for reappraisal by the Minister and, on 5 December 1992, a delegate of the Minister again rejected his claim. Once again, proceedings were lodged in the Federal Court of Australia and an injunction was obtained preventing his deportation.

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8 Now *Migration Act*, Division 6.

9 Section 54L, now *Migration Act*, s 178.

10 *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1993) 110 ALR 97. See also Poynder N "An opportunity for justice goes begging: *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*" (1994) 1 AJHR 414.

A remained in custody at the Port Hedland Detention Centre pending the new Federal Court proceedings until he was finally released when his wife was granted refugee status on 27 January 1994.

The grounds of the communication

On 20 June 1993 a communication was lodged on behalf of *A* with the UN Human Rights Committee, pursuant to the First Optional Protocol to the ICCPR (the Protocol). The communication claimed that Australia was in breach of the following provisions of the ICCPR:

Article 9(1): arbitrary detention

It was argued that *A*'s detention was inappropriate and unjust, in that its principal purpose was to deter other boat people from coming to Australia and to deter those already in Australia from continuing their applications for refugee status. It was also argued that no valid grounds existed for the detention of *A*, and that the length of detention — 1,299 days at the time of the communication — was unduly prolonged.

Article 9(4): release by the courts

It was argued that the effect of the May 1992 amendment to the *Migration Act* was that once a person is determined to be a "designated person" within the meaning of Division 4B, there is no discretion for a court to release the person, even if the detention was unlawful.

Articles 9(4) and 14(3)(c): access to lawyers

It was argued that the failure to provide *A* with a lawyer until almost a year after his arrival, his continual removal away from his lawyers to new jurisdictions, and the difficulties caused during his judicial appeals because of the isolation of Port Hedland and lack of funding for lawyers, all constituted breaches of Australia's obligation to provide access to lawyers under Articles 9(4) and 14(3)(c).

Article 9(5): compensation for unlawful detention

The High Court in *Lim's* case had indicated that, until the passage of Division 4B in May 1992, all of the *Pender Bay* detainees had been held unlawfully as there was no adequate legislation providing for detention.[11] As a result, further proceedings were

11 (1993) 110 ALR 97 at 109-110 per Brennan, Deane and Dawson JJ (with whom Gaudron J agreed); 126-127 per Toohey J; and 143 per McHugh J.

filed in the High Court on behalf of the *Pender Bay* detainees seeking damages for unlawful detention. On 24 December 1992, Parliament added s 54RA(1)-(4) to Division 4B of the *Migration Act*, which restricted any payment of compensation for unlawful detention to one dollar per day per person.[12] It was submitted to the Committee that *A* was entitled, as a result of his unlawful detention, to just and adequate compensation for such detention which was not satisfied by the sum of a dollar a day.

Article 2(1): "other status"

Finally, it was alleged that the mandatory detention provisions were only being applied to boat people, the vast majority of whom were Asian in origin, while other asylum seekers who did not arrive by boat were not subject to mandatory detention. It was submitted that this represented differential treatment in breach of Articles 9 and 14 on the basis of either "race" or "other status" under Article 2(1), by which States parties undertake to apply the rights in the ICCPR without distinction to, *inter alia*, "race" and "other status".

Admissibility stage

On 27 October 1993 the Committee advised that the communication would shortly be submitted to the Special Rapporteur for New Communications, pursuant to Rule 89 of the Committee's Rules of Procedure.[13] This provides for the establishment of a Working Group of no more than five Committee members to consider the admissibility of a communication and to make recommendations to the Committee regarding the fulfilment of the conditions of admissibility laid down in the Protocol. Generally, the major consideration at this stage will be whether the matter is being examined under any other procedure and whether the individual has exhausted all domestic remedies.[14]

By letter dated 29 November 1993 the Committee advised that the communication had been registered and, pursuant to Rule 91, a copy had been transmitted to the Australian government with a request that any information or observations on admissibility be delivered to the Committee within two months.

Australia's submission on admissibility — which was not delivered until 13 July 1994, almost six months late — did not contest the admissibility of the complaint

12 Section 54RA. This was later repealed and replaced by legislation purporting to retrospectively authorise the detention of the detainees: Migration Legislation Amendment Bill (No. 3) 1994.

13 *Rules of Procedure of the Human Rights Committee*, UN Doc CCPR/C/3/Rev 2.

14 First Optional Protocol to the ICCPR, Art 5.

under Article 9(1) as it was apparent that *A* had exhausted all domestic remedies by reason of the unsuccessful High Court proceedings *Lim's case*.[15] However, Australia indicated that this aspect of the communication would be strongly contested on the merits, and it contested the admissibility of the other elements of the communication. *A* delivered further comments on Australia's submission on admissibility on 17 October 1994, and the question of admissibility was set down for examination by the Committee at its session in March–April 1995.

On 4 April 1995 the Committee decided that the communication was admissible concerning the allegations under Articles 9(1), 9(4) and 14(1). However, the allegations under Article 9(5) were determined to be inadmissible on the grounds that *A* had not exhausted all domestic remedies because of the pending High Court proceedings for unlawful detention.[16] The complaints relating to "race" and "other status" were also determined to be inadmissible for failure to exhaust domestic remedies as there was no evidence that allegations of such discrimination were ever raised before the courts or other bodies.

Having found the communication to be admissible in part, the Committee requested Australia to provide its submission on the merits of the admissible parts of the communication within six months.

Submissions on the merits

Australia delivered its submission on the merits on 10 May 1996, approximately four months late. Taking into account matters which had already been raised at the admissibility stage, the substance of Australia's submission was as follows:

(i) The rationale for Australia's policy of detention is to ensure that unauthorized entrants do not enter the Australian community until their alleged entitlement to do so has been properly assessed and, if rejected, they will be available for removal.

(ii) From late 1989 there was a sudden and unprecedented increase in the number of "boat people" seeking refugee status, which led to severe delays in processing of claims. The policy of detention must also be considered in the

15 (1993) 110 ALR 97.

16 The High Court proceedings have not yet been completed. However, when they have been completed it will be open for *A* to seek to reopen this aspect of the communication on the grounds that his domestic remedies have now been exhausted.

light of Australia's full and detailed consideration of refugee claims, which leads to unavoidable delays in processing.

(iii) Detention was necessary to prevent the absconding of asylum seekers, as had been the case when some other groups had previously been held in low security centres.

(iv) *A* was advised of his entitlement to request legal assistance upon arrival, and in fact did obtain legal assistance during the administrative and judicial stages of his refugee claim. In any event, it was claimed that legal expertise is unnecessary to make an application for refugee status.

(v) The detention of *A* was neither disproportionate nor unjust; in addition it was predictable, since the applicable Australian law had been widely publicised.

(vi) The reliance by *A* on international law other than that contained in the ICCPR, such as customary international law and the practice of other states, the Refugee Convention and Protocol,[17] Conclusions of the Executive Committee of the United Nations High Commission for Refugees, and the Convention on the Rights of the Child,[18] is irrelevant to the considerations of the Committee and do not amount to a breach of Article 9(1).

(vii) It was always open to *A* to file an action challenging the lawfulness of his detention, and the courts were able to release *A* if they found that he was being held unlawfully.

(viii) The remote location of the Port Hedland detention centre was not such as to obstruct access to legal advice, given the number of flights to Port Hedland and the availability of RCOA lawyers in the centre for much of the time.

(ix) Administrative and judicial proceedings relating to refugee status are outside the scope of Article 14(1). Even if they are within the scope of Article 14(1), the procedural guarantees in Article 14 were met in *A*'s case.

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17 1951 Convention Relating to the Status of Refugees, done 28 July 1951, Australian Treaty Series No 5 of 1954, entered into force 21 April 1954. As amended by the 1967 Protocol Relating to the Status of Refugees, done 1 January 1967, Australian Treaty Series No. 37 of 1973, entered into force 4 October 1967.

18 Adopted and opened for signature and ratification and accession by the General Assembly on 20 November 1989, entered into force on 2 September 1990: UN Doc A/RES/44/25.

On 22 August 1996, submissions were delivered on behalf of *A* which took issue with the matters raised by Australia on the merits, in particular in relation to the rationale for the policy of detention and the absence of individual justification for the detention of *A*, the long delays in processing the claim for refugee status, the difficulties which *A* had in finding legal assistance which ultimately had to be obtained on a *pro bono* basis, the difficulties and expense of attending Port Hedland, and the lack of any realistic avenue for release by the courts.

Findings on the merits

The communication was initially set down for consideration on the merits by the Committee at its 58th session in October–November 1996; however the matter was not reached on that occasion and was held over until its fifty-ninth session in New York in March–April 1997.

The views, which were adopted on 3 April 1997 and dated 30 April 1997, were as follows:

Article 9 (1)

(i) The Committee noted first that "arbitrariness" must not be equated with "against the law", but includes elements such as inappropriateness and injustice. Remand in custody will be arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence.[19]

(ii) Australia had sought to justify *A*'s detention by the fact that he had entered Australia unlawfully and by the perceived incentive to abscond. However, the Committee noted that, while it is not arbitrary *per se* to detain asylum seekers:

> ... every decision to keep a person in detention should be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. For example, 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

19 *A (name deleted) v Australia*, Communication No. 560/1993, Human Rights Committee, 59th session, 24 March–11 April 1997, UN Doc CCPR/C/59/D/560/1993 dated 30 April 1997, para 9.2.

absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal.[20]

(iii) In the present circumstances, the Committee held that *A*'s detention was in breach of Article 9(1) in that:

> ... the State party has not advanced any grounds particular to the author's case, which would justify his continued detention for a period of four years, during which he was shifted around between different detention centres.[21]

Article 9(4)

(i) The Committee observed that, after the amendment to the *Migration Act* in May 1992, the courts' control and power to order the release of an individual was limited to an assessment of whether the person was a "designated person" within the meaning of the Act and, if the criteria were met, the courts had no power to review the continued detention of the person or order any release.[22]

(ii) Importantly, the Committee found that the test of "lawfulness" under Article 9(4) was lawfulness *under the ICCPR*, not lawfulness at domestic law:

> ... court review of the lawfulness of detention under Article 9, paragraph 4, which must include the possibility of ordering release, is not limited to mere compliance of the detention with domestic law ... [W]hat is decisive ... is that such review is, in its effects, real and not merely formal. By stipulating that the court must have power to order release "if the detention is not unlawful", Article 9, paragraph 4, requires that the court be empowered to order release, if the detention is incompatible with the requirements of Article 9, paragraph 1, or in other provisions of the Covenant.[23]

(iii) The Committee went on to find that:

> As the State party's submissions in the instant case show that court review available to A was, in fact, limited to a formal assessment of the self evident fact that he was indeed a "designated person"' within the meaning of the *Migration Amendment Act* ... the author's

20 *Ibid*, para 9.4.

21 *Ibid*.

22 *Ibid*, para 9.5.

23 *Ibid*.

rights, under Article 9, paragraph 4, to have his detention reviewed by a court, was violated.[24]

Articles 9(4) and 14

The Committee found that, as *A* had been informed of his right to legal assistance on the day of his arrival and did not avail himself of that right, and as he had in fact had access to legal advice whenever he had requested it, there had been no breach of Article 9(4) in relation to access to lawyers, and there was no need to consider the issue under Article 14(1).

Article 2(3)

The Committee concluded that under Article 2(3):

> ... the author is entitled to an effective remedy. In the Committee's opinion, this should include adequate compensation for the length of the detention to which A was subjected.[25]

Follow-up

The Committee requested Australia to provide information about the measures taken to give effect to its Views within 90 days.[26]

Individual opinion of PN Bhagwati

An individual opinion was also given by Mr PN Bhagwati who, while concurring with the Committee, made further comments which rejected Australia's assertion that under Article 9(4) one need only refer to the lawfulness of detention under *domestic* law and not international law. In re-emphasising this point, Mr Bhagwati was endorsing the well-established principle of domestic statutory interpretation that human rights legislation should be interpreted broadly so as to give effect to the objects of the legislation:[27]

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24 *Ibid.*

25 *Ibid*, para 11.

26 *Ibid*, para 12.

27 See eg, *Street v Queensland Bar Association* (1989) 168 CLR 461 at 487, 508, 566, 581; *Waters & Ors v Public Transport Corporation* (1991) 173 CLR 349 at 359 per Mason CJ and Gaudron J; *Re Ontario Human Rights Commission v Simpsons-Sears Ltd* (1958) 23 DLR (4d) 321 at 329; *Re Saskatchewan Human Rights Commission v Canadian Odeon Theatres Ltd* (1985) 18 DLR (4d) 93.

> ... this would be placing too narrow an interpretation on the language of Article 9, paragraph 4, which embodies a human right. It would not be right to adopt an interpretation which will attenuate a human right. It must be interpreted broadly and expansively. The interpretation contended for by the State will make it possible for the State to pass a domestic law virtually negating the right under Article 9, paragraph 4, and making a non-sense of it ... I would therefore place a broad interpretation on the word "lawful" which would carry out the object and purpose of the Covenant..

Significance of the decision and follow-up

A v Australia represents a comprehensive rejection of the policy of mandatory detention which cannot be ignored. Previously when under heavy criticism, the Australian Government has sought to justify the policy on the basis that mandatory detention will not be in breach of the ICCPR as long as it is not unduly prolonged.[28] The Committee's views put paid to that argument. The effect of the Committee's findings is that — regardless of its length — detention will *always* be in breach of Article 9 as long as the following factors are not satisfied:

(i) *Justification* of the decision to detain, in *every individual case.*

(ii) *Regular, effective review* by the courts of the decision to detain.[29]

While the detention provisions in the *Migration Act* relevant to *A v Australia* have now changed, there is little doubt that the current detention regime fails to satisfy the requirements spelt out by the Committee. Unauthorised arrivals are now held under s 189 which — in conjunction with s 196 — requires that any person who does not hold a valid visa must be held in detention until he or she departs Australia or is granted a visa. There is still no individual assessment or justification for the detention of each new arrival, and most are held in detention for the entire period of the processing of their claim for asylum. While bridging visas are available which allow for the release of certain classes of detainees —

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28 See, eg, Joint Standing Committee on Migration, Asylum, Border Control and Detention, (AGPS, Canberra, 1994) at paras 4.37-4.42; 4.146-4.156; 4.181.

29 Length of detention, while relevant, will not be conclusive. In the leading decision on arbitrary detention under Art 9 — *Van Alphen v the Netherlands*, (Communication No. 305/1988, views adopted 23 July 1990) — the complainant had been held in detention for a period of only nine weeks.

notably the very old, the very young, and torture and trauma victims[30] — these exclude the vast majority of asylum seekers and are rarely granted.

In addition, there is still no effective review of detention by the courts. Once a person is determined to be an "unlawful non-citizen" and is thereby detained, there is no power to release the person regardless of the unlawfulness of the detention under international law. Furthermore, the limited categories of available bridging visa are so qualified by non-reviewable Ministerial discretions that it cannot be said that there is any effective review of decisions to refuse bridging visas in these restricted categories.

Unsurprisingly, given its previous failure to meet the Committee's deadlines, Australia has been dragging its feet in formally responding to the Committee's views, and no response had been delivered by the expiration of 90 days on 29 July 1997.

The initial public response of the government has, however, been disingenuous, with the Immigration Minister, Mr Ruddock, seeking to characterise the finding as limited to the length of detention under the superseded (and by implication irrelevant) *Migration Act* provisions.[31] No express reference has yet been made to the requirement that adequate compensation be paid to *A* as a result of his unlawful detention, nor has there been any consideration given as to how such compensation would be assessed, although this could presumably be achieved along the same lines as in previous cases where boat people who have been found at domestic law to have been unlawfully detained.[32]

The formal response to the Committee's views by Australia, when provided, will be a significant indicator of Australia's willingness to abide by its obligations under the ICCPR and the Protocol. In the absence of a Bill of Rights, and in a political and legal climate in which the existence of implied Constitutional rights appears to be receding,[33] the complaints mechanism under the Protocol — for all its shortcomings — remains one of the few avenues open to persons who claim that their international civil and political rights have been breached by

30 *Migration Act* s 72, Migration Regulations reg 2.20.

31 "Boat people have compo case: UN" *The West Australian* 16 May 1997.

32 See, eg, *Minister For Immigration and Ethnic Affairs v Tang Jai Xin* (1993) 118 ALR 603 (Full Federal Court; (1994) 125 ALR 203 (High Court), where findings were made that the applicants had been detained unlawfully under the *Migration Act*.

33 See, eg, *Alec Kruger & Ors v The Commonwealth of Australia* (1997) 146 ALR 126.

Australia.[34] While it is unlikely that Australia would take the drastic step of denouncing the Protocol — as has been suggested in some circles[35] — in order to avoid scrutiny by the Human Rights Committee of its treatment of individuals, the initial reaction to the views does not engender confidence in Australia's ultimate response, and rights advocates in Australia and worldwide[36] will continue to await the response with interest.[37] ●

34 It is relevant in this context to note that the Human Rights Committee has recently accepted for registration a new Communication relating to the incommunicado detention of a Sino-Vietnamese asylum seeker who was refused information about his right to request a lawyer, thereby losing his opportunity to apply for refugee status. The new communication alleges that Australia acted in breach of Art 10(1) of the ICCPR, which states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity for the human person. Australia has been requested to provide a response on both the admissibility and merits of the communication within six months: see letter dated 9 October 1997 from the Human Rights Committee (copy on file with the author).

35 See, eg, Lombard G "We mustn't spit the dummy" *Canberra Times*, 26 February 1997.

36 Amnesty International has recently launched an international campaign on refugees which has focussed upon Australia's treatment of boat people — see, eg, Amnesty International "Australia: a champion of human rights?" January 1997 (27) *Focus* 3 at 6.

37 Australia has still not responded to the finding of the Committee by the end of November 1997, and criticism was beginning to mount. On 30 October 1997 a motion proposed by Senator Brian Harradine was passed by the Senate calling on the Government to urgently respond to the ruling and to report to Parliament within 60 days on how the mandatory detention policy can be amended to meet international human rights standards, and on 17 November 1997 Amnesty international held a national day of action in which members were called upon to flood the Minister's office with facsimiles reminding him that the Government had not responded to the Committee's findings.