

**RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE VIEWS OF THE HUMAN RIGHTS COMMITTEE IN
COMMUNICATION NO 1875/2009 (M.G.C. v Australia)**

1. The Australian Government (Australia) presents its compliments to the members of the Human Rights Committee.
2. Australia has given careful consideration to the views of the Committee expressed in Communication No. 1875/2009 (M.G.C. v Australia), transmitted to Australia on 7 April 2015. In accordance with the Committee's request, these views have been published on the website of the Australian Attorney-General's Department.¹
3. Australia welcomes the Committee's findings that allegations of a contravention by Australia of articles 13, 14, 17, 18(4), 23 and 24(1) of the International Covenant on Civil and Political Rights ('Covenant') and the Convention on the Rights of the Child were either not admissible or not sufficiently substantiated.
4. Australia makes the following comments in response to the Committee's views.

Article 9, paragraph 1

5. Australia acknowledges its obligations under the Covenant not to subject individuals to arbitrary detention, and further acknowledges that there are some circumstances in which the lawful and permissible detention of a person may become arbitrary if there are no longer grounds to justify it.
6. Australia welcomes the understanding of the Committee that the author's detention and subsequent removal were carried out in accordance with Australian law pursuant to sections 501, 189 and 198(6) of the *Migration Act 1958* (Cth) (the Act).² However, Australia does not share the Committee's view that the detention of the author, despite being pursuant to law, was arbitrary and in breach of article 9(1) of the Covenant.
7. Australia reiterates its further submissions to the Committee on admissibility and merits,³ that it is entitled to take measures, including detention, to control the entry of non-citizens into its territory and that this is consistent with the fundamental principle

¹ Human Rights Communications, Australian Attorney-General's Department website:
<<http://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Humanrightscommunications.aspx>>.

² Views of the Committee at [11.3].

³ Dated 1 November 2012.

of sovereignty in international law.⁴ The Committee acknowledged in its views that immigration detention for administrative purposes is not arbitrary *per se* under international law.⁵ Australian law provides for the detention of unlawful non-citizens at the end of a term of criminal custody, to ensure that a person who does not have a lawful basis to remain in Australia is available for removal. Australia considers that the author's detention in this context is for a legitimate purpose.⁶

8. Australia reiterates that the length of the author's immigration detention is related to legal proceedings instituted by the author regarding the cancellation of his spouse visa and refusal of his Protection visa application. In respect of both visa claims, the author had access to the highest levels of review, including by way of applications to the High Court of Australia and for ministerial intervention. While litigation was ongoing, Australia did not proceed with the author's removal and this had the effect of prolonging the period in which the author was detained.
9. Australia notes that the Committee reached its view on article 9, paragraph 1 partially on the basis of its understanding that Australia did not make an individual assessment of the need to maintain the author in immigration detention.⁷
10. Australia advises that in fact it did review the author's circumstances during his immigration detention on four separate occasions. Under the Act, the Minister has discretionary powers to intervene to grant a visa or make a determination for the person's community detention, if the Minister thinks that it is in the public interest to do so.⁸ The author's circumstances were considered for possible ministerial intervention under section 195A on three occasions and section 197AB of the Act on one occasion. In each of these cases, the Minister declined to intervene.⁹ Australia regrets that it did not clarify this fact for the Committee in its original submissions.
11. Therefore, contrary to the view of the Committee, it is Australia's position that the author's detention was reviewed on several occasions and in substantive terms.

⁴ Australian Government submissions, November 2012 at [21].

⁵ Views of the Committee at [11.5].

⁶ Australian Government submissions, November 2012 at [20].

⁷ Views of the Committee at [11.6].

⁸ Section 195A of the Act provides discretion to grant a visa and section 197AB provides discretion to make a Residence Determination, including for community detention.

⁹ The Minister declined to intervene under section 197AB of the Act on 21 March 2007 and declined to intervene under section 195A of the Act on three occasions on 8 August 2007, 23 May 2008 and 27 February 2009.

Conclusion

12. For the reasons set out above, Australia is of the view that the author's detention was in accordance with article 9(1) of the Covenant.
13. It follows that Australia does not accept the Committee's views that it is obliged to provide the author with a remedy, nor conduct a review of its migration legislation.
14. Australia avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.