

**RESPONSE OF THE AUSTRALIAN GOVERNMENT
TO THE VIEWS OF THE COMMITTEE IN
COMMUNICATION NO. 1442/2005 KWOK V AUSTRALIA**

1. The Australian Government presents its compliments to the members of the Human Rights Committee.
2. The Australian Government has given careful and serious consideration to the Views of the Committee expressed in Communication No. 1442/2005 *Kwok v Australia*, dated 6 November 2009. These views have been published on the website of the Attorney-General's Department.¹
3. The Australian Government regrets the delay in providing its response to the Views of the Committee.
4. The Australian Government is pleased to inform the Committee that, since the release of the Committee's Views in this matter, Ms Kwok has been granted a permanent residence visa. On 14 September 2010, the former Minister for Immigration and Citizenship, Senator Chris Evans, intervened in Ms Kwok's matter under section 417 of the *Migration Act 1958* (Cth) (the Act) to grant her a visa. Ms Kwok was notified of the former Minister's decision on the same day (14 September 2010) and was released from community detention. This visa entitles Ms Kwok to remain in Australia indefinitely and have access to the same services as other permanent residents.
5. The Australian Government notes that the grant of a permanent residence visa to Ms Kwok provides an effective remedy in relation to her *non-refoulement* claims.
6. The Australian Government also wishes to update the Committee on the status of Ms Kwok's complaint to the Australian Human Rights Commission (AHRC). The AHRC notified the Department of Immigration and Citizenship on 8 October 2010 that it had closed its investigation of Ms Kwok's complaint, following Ms Kwok's request that her complaint be

¹ Human Rights Communications,
<http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationCommunications>.

withdrawn on the basis that it had been resolved by the former Minister granting her a visa.

7. The Australian Government acknowledges that continuing detention may become arbitrary after a period of time without proper justification. The determining factor, however, is not the length of detention, but whether the detention continues to be justifiable. The Australian Government regrets the length of Ms Kwok's detention, but notes that the period of her detention in an immigration detention centre was lawful in accordance with the *Migration Act 1958* (Cth).
8. The Australian Government avails itself of this opportunity to renew to the Human Rights Committee the assurances of its highest consideration.