

Morling Baptist College

A Christian response to asylum seekers and other immigrants

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Brief Biography of the Author

David Prince is a graduate of the University of New South Wales where he obtained a Bachelor of Science and a Bachelor of Laws. He worked for some time as the personal researcher for Dr Kathryn Cronin before joining *Corby Levingston Solicitors* (later *Christopher Levingston & Associates*) between 1994 and 2007. Since 2007 David has been with *Kah Lawyers* and is currently a Partner at the firm.

David has been accredited as a specialist in Australian Immigration Law by the Law Society of New South Wales from August 2000 until the present time and from 1995 he has practiced extensively in all areas of Australian Immigration Law including primary visa applications, merits review and judicial review in all Federal jurisdictions.

In 2003 and 2008 David edited the *Immigration, Citizenship and Passports* chapters of *Halsbury's Laws of Australia*. In 2007 David also edited the *Immigration* chapter of *Australian Encyclopaedia of Forms and Precedents* and is currently editing the *Citizenship* chapter for that same publication.

Both David Prince and Michael Kah of *Kah Lawyers* were listed as among Australian leading immigration lawyers in the Australian Financial Review "Best Lawyers" review of 7 March 2008.

Outline

1. Deciding who is allowed to come to Australia is primarily a political issue.
2. However, for too long the treatment of people who come into Australia, or who enter Australian territorial waters, has also been treated primarily as a political issue. However, it is my view that first and foremost this should be tempered by issues of love, compassion and respect for human dignity.

Border Protection – Pacific Solution

3. Terribly inhumane system.
4. Cost a massive sum of money, was largely ineffective.
5. The vast majority of people detained on Manus Island and Nauru were recognised as refugees and granted asylum in Australia or New Zealand.
6. The 2007 election platform of the then Rudd opposition was to close the Pacific Solution. Since taking office the end of those processing in foreign countries has ended.

Temporary Protection visas

7. Explain the difference between TPV and PPV.
8. Rudd government has announced the end of that barbarous system. Another method to inflict suffering. The ending of this system is a great credit to the Rudd Government.

Border Protection – Excision from the migration zone

9. Christmas Island. Physically part of Australia, but legally a foreign land.
10. Assessed under the UN protocols. If accepted as a refugee then brought to Australia. If not, no access to the domestic appeal structure. Compare with onshore merits review to the RRT and judicial review to the Courts.
11. ALP maintaining Christmas Island and the concept of excision from the Migration Zone.

12. Detention should only occur long enough to verify identity, assess security risks and conduct health screening. Once that has occurred they should be brought to a heavily populated part of the mainland with ready access to quality legal representation.

Onshore Assessment of PV claims

13. 45-day rule. Should be completely removed.
14. If a person is allowed to remain lawfully in Australia they should be granted permission to work throughout the process.
15. The A/A needs to prove everything with DIAC refusing most applications in unseemly haste.
16. Many applicants approach RMA's purely on the basis of language with many PV applications being pathetically prepared. That system needs to be dramatically changes with the determiner of refugee status being empowered with genuine inquisitorial powers ready, willing and able to investigate the A/A's claims.
17. If we had a proper determination system then judicial review would be less important.

Section 189 - Mandatory Detention

18. Terribly discretionary system.
19. Basically the system is that all people without a visa must be locked up – but we decide whether to give you a visa or not if you have ever been unlawful.
20. Allows for gross abuse as the hands of the executive, something that happened for many years.
21. The last 2 years of the Howard government saw a dramatic change of culture with the detention population being drastically reduced.
22. But the law remains the same, and a change of policy/culture could easily see a return to the days of “lock them up first and only ask questions years later or if forced by a good migration lawyer”.
23. Legislative protection of liberty should be the starting point, with detention only occurring with a positive concern of security, criminality etc.

Section 501 character

24. Old system – exposed to deportation if serious criminal offences committed within 10 years of being granted PR. After that, you were our problem.
25. Gross overuse of this power.
26. Little/no legislative limit on how this power can be used (see Ruddock's decision to cancel all visas personally so that no merits review is possible).
27. If a visa is cancelled on most character grounds and the person removed they can never return. No chance for rehabilitation or reformation of character.
28. There should be a time limit on the use of this power following the grant of PR. Should not be exposed to cancellation simply for failing to attend a citizenship ceremony as the act of a rebellious youth.
29. Broad discretions should be removed.
30. The Minister should only be able to exercise the power on national security grounds.