

our Ref: Senate Foreign Affairs, Defence and Trade Committee

Quote in reply: International Law and Relations Committee:21000325/70

5 July 2010

Senate Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
Australia

By Email: fadt.sen@aph.gov.au

Dear Sir / Madam

AUTONOMOUS SANCTIONS BILL 2010 - QLS SUPPLEMENTARY SUBMISSION

We refer to our letter dated 1 July 2010 and request that the following submission be read in accordance with that letter.

It is the view of the Queensland Law Society that the open-ended language of the *Autonomous Sanctions Bill 2010* ("the Bill") and the severity of the consequences of breach are further exacerbated by the generality of the language in which sanctions are imposed. This has the effect of severely limiting the grounds of judicial review of the merits of any decision that a person falls within the group.

This limitation of judicial review is demonstrated by the recent Full Federal Court decision of *Aye v Minister for Immigration and Citizenship* (June 2010) NSD 1031 of 2009. The appellant, aged 25, was the daughter of a senior member of the Burmese military government. She had entered Australia without any fraud or concealment of her identity. Her own name was not on any list of persons subject to sanction. She had been in Australia for some time and had almost completed a masters degree and was about to enter into full time employment when her identity was discovered.

Due to the language of the sanction (spouses and children), the only issue on which she could be heard by the Minister was whether she fell within that description. She undoubtedly did so. Her claim to remain in Australia rested on a submission that she was estranged from her family, did not share the views that led to the sanction, was fully emancipated and in no way was dependent on the financial or other support of her parents. The Full Federal Court ruled that her claim was not justiciable, nor was the refusal to hear the details a breach of due process. This was a political decision in the discretion of the responsible Minister/s, and was not capable of being reviewed by the courts.

The language of the sanction means that it accepts and embodies the principle of guilt by association without examination of the facts that support the policy of the sanction. This is repugnant to our common law tradition, and it is only in times of the gravest national crisis that our laws have operated on that basis. If the appellant had been the estranged wife of a senior Minister, and a lawyer gave her advice on her legal position, would that attract the application of the Bill? Did those who taught and provided other services to Ms Aye breach the provisions?

Given that Fiji is one of the countries on the list, and the traditionally close relations between the Queensland Law Society and Fiji, there is ground for concern about the operation of the policy that underlies the Bill. More precision is needed as to the language and the focus of the policy, and also the Bill.

We look forward to receiving your comments on the issues raised in our letters.

If you would like to discuss these issues further, please do not hesitate to contact Binny De Saram, Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au.

Yours faithfully

Peter Eardley
President