



Department of Immigration and Citizenship

DETENTION ARRANGEMENTS: THE CASE OF MR W

April 2009

*This is an abridged version of report 06/2009.
The full report has not been made publicly available
due to privacy considerations.*

Report by the Acting Commonwealth and Immigration Ombudsman,
Dr Vivienne Thom, under the *Ombudsman Act 1976*

REPORT NO. **06|2009**

Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

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BACKGROUND

Mr W is a Sri Lankan citizen who was held in an immigration detention centre (IDC) for nearly two years before being removed from Australia. Mr W returned to Australia as a permanent resident.

The Ombudsman conducted a review of Mr W's case in response to a request from the Secretary of the Department of Immigration and Citizenship (DIAC) in July 2008. The investigation examined the decision to detain Mr W, his place of detention, the way his torture and trauma claims were handled and his health care while in detention. Other matters considered included DIAC's assessment of his requests for ministerial intervention, his removal from Australia and the way DIAC handled complaints made on his behalf once he had departed. Identity issues and recordkeeping were also noted.

CONCLUSION

The investigation found that DIAC had reasonable cause to believe that Mr W was an unlawful non-citizen without a valid visa at the time he was detained and throughout his period of detention. DIAC had conducted sufficient investigations which revealed that Mr W had entered and been living in Australia under an assumed identity. Adequate evidence had been compiled at the time Mr W was detained to establish his true identity and immigration status.

However, after he was detained, DIAC failed to consider whether community detention arrangements were more appropriate for Mr W given his claim to be a survivor of torture and trauma. DIAC also failed to ensure Mr W was referred to a torture and trauma specialist for assessment in a timely manner. DIAC's contracted provider of psychological and counselling services referred Mr W to a torture and trauma specialist in January 2007. However, the contractor had been aware of Mr W's torture and trauma claims since December 2005 when Mr W had disclosed them to a counsellor employed by the contractor. DIAC had been aware of Mr W's torture and trauma claims since he lodged an application for a protection visa in February 2006, which detailed his claims. DIAC had also received the decision record of the Refugee Review Tribunal (RRT) in April 2006, which accepted, with some reservations, that Mr W had been harmed as he claimed. The failure to promptly refer Mr W to a torture and trauma specialist occurred despite the fact that DIAC was developing policies at the time to specifically ensure survivors were provided with appropriate treatment by torture and trauma specialists.

The torture and trauma specialist who assessed Mr W advised that he was suffering some post traumatic stress anxiety as a result of the assaults he and his family had suffered in Sri Lanka. An external general practitioner (GP) who was asked to examine Mr W's scars found it was likely he was suffering from Post Traumatic Stress Disorder (PTSD). The medical reports were submitted to DIAC and were considered by the detention health services provider. The detention health services provider advised that Mr W did not suffer from PTSD but did have a personality disorder. As a result, further treatment with the torture and trauma specialist was not pursued and Mr W continued to be managed by the Mental Health Team within the IDC.

Commonwealth Ombudsman—Department of Immigration and Citizenship: Detention arrangements—the case of Mr W

DIAC considered multiple requests from Mr W's lawyer to the Minister for Immigration and Citizenship to intervene in Mr W's case to grant him a visa to remain in Australia. However, the submission that went to the Minister did not contain information about the disclosures regarding torture and trauma Mr W had made to the psychological and counselling services provider and later to the detention health services provider. Subsequent decisions not to refer Mr W's case to the Minister were compromised by incorrect statements, paraphrasing and insufficient information due to a failure to share information across related areas of DIAC. DIAC also decided not to put a further submission to the Minister when the results of the torture and trauma assessment became available, even though this information constituted additional information that should have warranted a further submission to the Minister.

Following a negative decision on Mr W's fourth ministerial intervention request in October 2007, DIAC took action to remove Mr W from Australia, as required under the *Migration Act 1958*. The records show DIAC gave detailed consideration to the removal arrangements. It consulted with the detention services provider, the detention health services provider and the provider of psychological and counselling services about Mr W's likely mental state and reaction to the negative decision and the prospect of being removed. By all accounts, Mr W's removal was one of the most difficult DIAC had experienced and required managing Mr W's attempts to self-harm prior to his removal. However, despite the challenging nature of the removal, DIAC failed to review the process after Mr W had departed to ensure all procedures had been followed correctly.

When stakeholders later complained on Mr W's behalf, DIAC failed to review the circumstances of Mr W's case in detail or to investigate the claims in a timely manner. While arrangements were made to refer the matter to an independent party many months later, in the interim DIAC failed to consult all of its own files before briefing the Secretary on the matter. Furthermore, DIAC failed to identify a number of the errors and shortcomings detailed in this report. These weaknesses will need to be addressed in line with DIAC's commitment to improve its oversight and quality assurance processes to ensure it is an open, accountable and transparent organisation.

RECOMMENDATIONS

The report made the following recommendations which address the administrative deficiencies identified in the Ombudsman's investigation. DIAC will need to consider whether further steps should be taken for Mr W given the conclusions in this report.

It is recommended that DIAC:

- as a matter of priority implement an instruction on the identification and support of survivors of torture and trauma in immigration detention
- review its procedures to ensure that persons who are identified as survivors of torture and trauma are considered for community detention in a timely manner
- provide training to its staff and contractors to ensure all people working with detainees are aware of the procedures for dealing with survivors of torture and trauma
- review its procedures to ensure that different areas of DIAC that have a need to know about medical information relating to a detainee are provided with that information

Commonwealth Ombudsman—Department of Immigration and Citizenship: Detention arrangements—the case of Mr W

- ensure its procedures emphasise that statements made in ministerial intervention submissions and assessments must be adequately supported by the evidence and referenced appropriately
- introduce a requirement for involuntary removals to be reviewed after they have occurred, in consultation with all participating parties
- as a matter of priority finalise a policy on the recording, storage and retention of video footage of involuntary removals and other significant incidents in immigration detention centres
- having regard to the findings of this investigation, review:
 - the adequacy of the message it provides to its staff and contractors on the importance of accurate and comprehensive recordkeeping and ensure sufficient resources are allocated to this task
 - whether its systems ensure that DIAC staff have a single view of a client's information and personal identifiers and that this information is accurate and up-to-date.

Agency response

The Department agreed to all recommendations made in the report.