

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 060/06

Principal facts

Personal details

1. Mr X died on 17 March 2006. He had terminal cancer and prior to his death, resided with his parents on the central coast of New South Wales. He was 49 years old and had been divorced, with no children. His three siblings are in Australia.
2. Mr X arrived from Scotland with his family in 1967 under the 'Assisted Passage Scheme'. The family returned to Scotland in 1969. In 1974 the family returned to Australia under the 'Second Assistance Scheme' and Mr X obtained a Transitional Permanent Residence (TPR) visa.
3. Under the *Migration Act 1958* s 486O the Ombudsman is required to prepare an assessment of the appropriateness of detention arrangements for a person upon receiving a report from the Secretary under s 486N of the Act. This report is being submitted to the Minister as required by s 486O and was prepared in draft before advice was received that Mr X had died.

Detention history

4. Mr X was detained at Villawood Immigration Detention Centre (IDC) from 25 February 2003 until 22 August 2005. On 22 August 2005 he was placed on a Residence Determination (RD) and he moved to his parent's home. On 5 October 2005, he was released from immigration detention as the Department (DIMA) considered he may be an 'absorbed person' to whom the Full Federal Court (FFC) of *Nystrom v MIMA [2005] FCAFC 121* (*Nystrom* decision) applied. The Minister has sought High Court leave to appeal the *Nystrom* decision.

Visa applications

5. In January 2003, the then Minister cancelled Mr X's TPR visa (class BF C) under s 501(2). His application to the Federal Magistrates Court (FMC) for judicial review of the Minister's cancellation decision was dismissed (April 2005).

Removal details

6. On 31 May 2005, the Department was informed that Mr X was not available for removal on medical grounds.

Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N dated 17 October 2005 was received on 3 November 2005.
8. A submission was received from Mr X's legal representative, dated 30 January 2006.
9. Ombudsman staff did not interview Mr X as the Ombudsman had been advised that his terminal condition had deteriorated and that he had recently been in hospital and was then unable to speak. On 4 April 2006, the Department informed the Ombudsman's office that Mr X had died.