

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 589/10*

**This is the ninth s 486O report on Mr X as he has remained in immigration detention since the Ombudsman's eighth report. Previous reports are:**

**Report 360/08 tabled in Parliament on 12 March 2008**

**Report 426/08 tabled in Parliament on 4 June 2008**

**Report 484/08 tabled in Parliament on 25 November 2008**

**Report 556/09 tabled in Parliament on 16 September 2009**

**Report 574/09 tabled in Parliament on 10 March 2010**

## **Principal facts**

### *Visa applications*

1. The Department (DIAC) advises that the Refugee Review Tribunal (RRT) review of DIAC's decision not to grant Mr X a Protection Visa is ongoing.

### *Current immigration status*

2. Mr X remains an unlawful non-citizen in Community Detention.

### *Removal details*

3. Mr X remains the subject of an Interim Measures Request from the United Nations Human Rights Council.
4. DIAC advises that, subject to the Minister's agreement, a formal request will be made to the Minister for Foreign Affairs and Trade to seek assurances from the People's Republic of China (PRC) on Mr X's case.

## **Ombudsman consideration**

5. DIAC's further report to the Ombudsman under s 486N of the *Migration Act 1958* is dated 4 March 2010.
6. Ombudsman staff spoke with Mr X by telephone on 8 January and 31 March 2010. Ombudsman staff also spoke with Mr X's advocate Ms Y on 26 February and 31 March 2010.
7. Ombudsman staff sighted the following documents: a medical summary report from International Health and Medical Services (IHMS) dated 10 February 2010; and correspondence from Ms Y concerning the provision of health services to Mr X dated 29 March 2010.

## Key issues

### Health and welfare

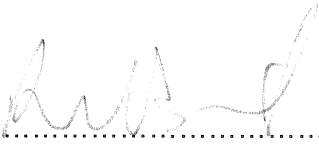
8. The IHMS report states that *'Mr X has a chronic adjustment disorder with an anxious and depressed mood ... this continues to be managed through psychiatric review on a regular basis ... and via anti-depressant and anti-anxiety medications'*. Mr X was also referred to a specialist for *'review of chronic left shoulder blade pain'* and has received radiological investigations and steroid injections.
9. Mr X told Ombudsman staff that he is depressed and anxious about the delay in the RRT hearing and his unresolved immigration status. He also worries about his father who is hospitalised in the PRC and visits a church regularly to pray for him.
10. In March 2010 Ms Y lodged a complaint with the Ombudsman's office on behalf of Mr X about DIAC's provision of health services while Mr X has been in Community Detention. The complaint concerns the *'long term provision of poor services, processes, practices and public relations ... and the subsequent detrimental effects upon the health and well-being of Mr X'*.
11. Mr X said that he had been reluctant to complain for fear that this could be detrimental to his case. However, he agreed to lodge the complaint because he feels that he has been treated *'very badly'* and he wants to see services for other detainees in Community Detention improved.
12. Part of the complaint is that IHMS has failed to pay accounts of several medical and dental practices Mr X has attended and Mr X perceives that this may be a factor negatively affecting his relationship with his medical practitioners. Mr X said that when he raised this issue with Detention Health Services (DHS) he was told that it was not his business. This was confirmed in correspondence from DHS to Ms Y dated 25 February 2010 which stated that *'Payment of these [IHMS] accounts should not be of concern to you and Mr X'*.
13. Mr X said it has been *'very difficult'* being interrogated by staff at medical practices who are unaware of IHMS or Mr X's position as a detainee in Community Detention. In January 2010 Ms Y said that she had decided she must accompany Mr X to each appointment *'because his English is not clear or fluent enough to explain to admin[istrative] staff that he is in a "unique" situation and does not have a Medicare card'*. Mr X also said that there had been unacceptable delays in referral services.
14. IHMS states that Life Without Barriers (LWB) was providing support to Mr X but this was discontinued in February 2010 *'following advice from Mr X's GP who indicated that he is capable of accessing general community services (e.g. transport and shopping) without depending on LWB to transport him or arrange appointments'*. Ms Y claimed that Mr X's GP had not interviewed or spoken with him for three months and therefore this assessment was not accurate. This complaint is being separately investigated but is included in this report as a record of current difficulties experienced by Mr X while he remains in Community Detention.

### Other detention issues

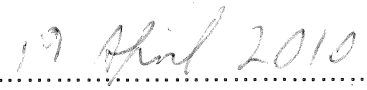
15. DIAC states that Mr X *'wishes to seek work within the community. He was offered the opportunity to undertake voluntary work however he has declined to do so'*.
16. Mr X told Ombudsman staff that he has been given no clear reasons for the refusal to consider him for a temporary visa pending a resolution to his immigration status. He said that, for the past 15 months, he has demonstrated that he is *'safe with the community'* and has always complied with DIAC's reporting requirements. He said that a visa would allow him to work and to receive improved access to health services.

### Ombudsman assessment/recommendation

17. In Report 574/09 the Ombudsman noted that Mr X's detention appeared to be indefinite and recommended that he be considered for a suitable visa with work and study entitlements until there is a resolution to his case. The Minister, in his Statement to Parliament of March 2010, stated that he considers Mr X's continued Community Detention placement is *'appropriate pending the outcome of the appeal to the RRT'*.
18. If Mr X is unsuccessful at the RRT, it is likely that he will seek judicial review. The length of Mr X's detention is inconsistent with the Immigration Detention Values. The Ombudsman again **recommends** that Mr X be considered for a suitable visa with work and study entitlements. This would also allow Mr X to access medical services with less difficulty than he appears to have experienced in the past 15 months.



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Ron Brent  
Acting Commonwealth and Immigration Ombudsman



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Date