

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 028/06

Principal facts

Personal details

1. Mr X is a 33 year old single male. He is a Bengali Muslim and a citizen of Bangladesh. His parents and siblings reside in Bangladesh.

Detention history

2. Mr X arrived in Australia as an unauthorised boat arrival in July 2000. He was detained under s 189(2) of the *Migration Act 1958* and transferred to the Port Hedland Immigration Reception and Processing Centre (PHIRPC). In May 2004 he was transferred to Baxter Immigration Detention Facility (IDF). On 16 June 2005 Mr X was transferred to Perth and admitted to the Bentley Hospital. Upon discharge from hospital he was detained at the Perth Immigration Detention Centre (IDC).

Visa applications

3. Applied for a Protection Visa (PV) (October 2000); refused by DIMIA (November 2000); refusal affirmed by Refugee Review Tribunal (RRT) (January 2001); challenge to RRT dismissed by Federal Court (August 2001); appeal dismissed by Full Federal Court (July 2003).
4. A s 417 request seeking favourable exercise of the Minister's humanitarian discretion lodged in December 2003 was deemed inappropriate to consider in May 2005. A second s 417 request was lodged on 17 June 2005. The Department (DIMIA) has determined that the request does not meet the guidelines for referral to the Minister.
5. DIMIA advised that it is preparing a submission to the Minister for consideration in using her detention intervention powers. The Department has advised that it may consider Mr X for alternative detention in the community.

Current immigration status

6. Mr X is an unlawful non-citizen detained at Perth IDC. His scheduled removal was aborted on 15 June 2005 due to his psychological condition. On the same day, in response to a complaint, the United Nations Human Rights Committee (UNHRC) issued an Interim Measures Request, requesting that Australia not deport Mr X as his case was under its consideration.

Ombudsman consideration

7. The DIMIA report to the Ombudsman under s 486N of the Migration Act received on 18 August 2005 (dated 4 August).
8. A letter from the United Nations High Commissioner for Human Rights dated 15 June 2005, including attached, a copy of a complaint entitled, '*Asylum Seeker Communication to United Nations High Commission For Refugees*' by Spare Lawyers for Refugees, undated, faxed on 15 June 2005.
9. A submission to the Ombudsman regarding Mr X, by the Co-ordinator of the Asylum Seeker Resource Centre (ASRC) including an attached letter to the DIMIA Manager Perth IDC, '*Re: Request to consider Bridging Visa R for Mr X*', and a '*Community Care Plan*' dated 22 August 2005.

10. An International Health and Medical Services (IHMS) medical report by a doctor dated 26 August 2005 and a Professional Support Services (PSS) report by the PSS Clinical Director dated 1 September 2005.
11. Mr X was interviewed by Ombudsman staff on 27 October 2005 in Perth IDC.
12. Submissions from the ASRC, dated 6 & 7 December 2005 including: letters to the Minister for Immigration regarding a s 417 request (dated 17 June, 22 August and 20 September 2005); a letter to the Minister regarding a Removal Pending Bridging Visa (RPBV) dated 5 December 2005; a psychiatric report by a doctor from Rural & Remote Mental Health Service South Australia, dated 10 June 2005; a letter from a community supporter dated 4 October 2005; and a medical report from a consultant psychiatrist, Mills St Clinic dated 2 November 2005.

Key issues

Health and welfare

13. The consultant psychiatrist, in his report of 10 June 2005, stated *'After approximately three years in detention he is severely depressed with psychomotor retardation, disturbed behaviour and episodic hallucinations'. 'I agree with your opinion that Mr X would benefit from a psychiatric admission to Glenside Hospital'*. The psychiatrist reported that Mr X stated he had no past psychiatric history and no past family psychiatric history.
14. The medical report from IHMS lists diagnoses of *'depression'* and *'threats of self-harming behaviour'*. The report notes that Mr X was detained as an involuntary patient under the Mental Health Act and admitted to Bentley Hospital from 16 June to 6 July 2005. He also spent periods of time on Suicide and Self Harm observations. The doctor recommended that, *'Mr X is likely to require ongoing review by psychiatrists'* and *'it is possible that this man's depression and anxiety may be better managed in a setting other than a detention centre'*.
15. On 9 December 2005, Ombudsman staff spoke with the treating psychiatrist for Mr X's Bentley Hospital admission. The psychiatrist indicated that Mr X's condition had been difficult to treat and he was expected to continue to respond poorly to treatment while he remained in detention. The psychiatrist's report provides the diagnosis of *'Major Depression which is superimposed upon the chronic demoralisation that he has experienced as being a detainee for a prolonged duration'*.
16. The Psychology Summary Report by the PSS Clinical Director, lists presenting issues of: *'concern re medical issues, depression, anxiety, self-harm ideation, anger and frustration'*. The report stated that he, *'responded to counselling however difficult to treat in detention environment due to fear regarding a forced return to Bangladesh. Medication appeared effective'*.
17. At interview with Ombudsman staff Mr X complained of concentration and memory difficulties. His presentation was flat and subdued, with a slowed rate of speech. He was softly spoken, he seemed tired and exasperated, and he appeared to have given up. He said his main mental health problem was that he felt suicidal, that he was on anti-depressant medication; he saw the GP weekly and a psychiatrist every three weeks. He stated he had a gastric reflux problem that was caused by his mental health condition. In response to questions regarding his activities in the detention centre, he said that he did little, he attributed this to side-effects of the medication, *'after medication I don't feel normal'*. He said he avoided activities as he became angry; he described a low frustration tolerance and fears of hurting himself or others.

Attitude to removal

18. Mr X fears return to Bangladesh. Though his application for a PV was rejected by DIMIA, the RRT and the courts, he is insistent that he is at risk in Bangladesh by reason that he has wrongly been held responsible for the death and injury caused to some government officials. The submission to the UNHRC from Spare Lawyers for Refugees states, 'X was convicted in his absence on the 28 December 2001 of having killed a police officer during a demonstration in Bangladesh on the 25th of November 1997... As a result of the conviction he will face life imprisonment if he is returned to Bangladesh'.

Other detention issues

19. Mr X was involved in a disturbance and placed in the Management Unit at PHIRPC for nine days from 4 December 2003. At interview he declined to discuss his experiences in the Management Unit; he said he was trying to keep such things in the past. Mr X stated, 'a couple of officers [Perth IDC], they are very aggressive ... sometimes they hit the detainees'.

20. Mr X said that they (detainees) were treated like animals. He complained of having to always wait for medication, that it was not dispensed at a regular time and he would frequently be sent away and have to return when the staff member was not busy.

Ombudsman assessment/recommendation

21. Mr X's situation is complicated by three competing factors. First, his application for a PV has been rejected; his legal challenges to that refusal were unsuccessful and concluded in July 2003. There is presently no legal obstacle to his removal to Bangladesh. Secondly, an earlier attempt to remove Mr X in June 2005 was aborted due to his psychological condition. It is foreseeable that the same problem would arise if a further attempt was made to remove him from Australia. Thirdly, he currently has a complaint before the UNHRC that (the Ombudsman has been informed) may not be resolved until mid-2007.

22. The Ombudsman is of the opinion that Mr X's continued detention is inappropriate, notwithstanding that it largely stems from his own unsuccessful attempts to seek a PV and his unwillingness to be removed from Australia. Mr X has already been in detention for five years and five months. The uncontradicted evidence before the Ombudsman is that Mr X has a serious mental illness and is suffering a deterioration in his health and psychological condition as a result of his long period of detention. Two doctors have advised that his mental disorder may be better managed outside of a detention centre. The psychiatrist noted, *'the uncertainty and hopelessness that he experiences in the environment of the Detention Centre does not permit substantial improvement, regardless of the medication and psychological approach used while detained. Therefore, it is my recommendation that an alternative arrangement is found by DIMIA whilst his immigration status is determined finally.'*

23. The Ombudsman **recommends** that an alternative arrangement be made for Mr X's residence, for example, a residence determination, or the grant of a Return Pending Bridging Visa. This will be all the more important if the Minister is inclined to await the findings of the UNHRC. CARAD, Western Australia, has indicated to the Ombudsman that it is in a position to coordinate housing and support for Mr X. His lawyer, in his RPBV request to the Department of 22 August 2005, has provided a comprehensive 'Community Care Plan' for Mr X. In considering an alternative to immigration detention, the Minister might also consider exercising her powers under s 195A to grant Mr X a Permanent Visa (subject to health and character checks) in the public interest and on humanitarian grounds. It is appropriate to consider that further option in light of the lengthy period of immigration detention that Mr X has experienced, the impact of that detention on his mental health, the possibility that continued detention will see a further

deterioration in his mental health, and the difficulty that he might face in accessing adequate mental health support if he is returned to Bangladesh.

24. The adverse impact of a long period of detention on Mr X has been noted elsewhere in this report and it would therefore be appropriate for DIMIA to consider what continuing role it should play in providing assistance to Mr X in the event that he is granted a visa to reside in the community.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date