

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 064/06

Principal facts

Personal details

1. Mr X is a 46-year-old single male born in Turkey. He has lost his Turkish citizenship and, if he wanted to reapply for it, he would have to agree to undertake mandatory military service. Mr X states that he has no contact with his family in Turkey.

Detention history

2. On 25 June 2003 Mr X approached the Department (DIMA) seeking a Certificate of Evidence of Residence Status. As an unlawful non-citizen, he was detained under s 189 (1) of the *Migration Act 1958* and was taken to Villawood Immigration Detention Centre (IDC). On 25 July 2003 Mr X was transferred into police custody to face outstanding charges. He was re-detained under s 189 (1) on 23 January 2004 at Villawood IDC after completing a criminal sentence.

Visa applications

3. Mr X arrived in Australia on a student visa in October 1990. The student visa ceased and Mr X did not apply for another substantive visa. A Bridging Visa (BV) application was refused (July 2003), refusal affirmed by the Migration Review Tribunal (MRT) (July 2003). Mr X's request for Ministerial discretion under s 351 (July 2003) was deemed inappropriate to consider (August 2003). Mr X was granted a two day BV (January 2004), after release from prison and prior to detention at Villawood. A second BV application refused (February 2004), refusal affirmed by the MRT (March 2004).
4. DIMA advised that a submission was before the Minister to consider her detention intervention powers.

Current immigration status

5. Mr X is an unlawful non-citizen and is detained at Villawood IDC.

Removal details

6. Removal for Mr X has been complicated. DIMA advised that Mr X has not cooperated with removal and has refused to apply for travel documents. Turkish law allows him to re-apply for Turkish citizenship but Mr X has refused. DIMA advises that the Turkish Ambassador has stated that application for Turkish citizenship is voluntary and that all Turkish males are subject to military service.
7. Mr X has reported that he had lived in Malta and has family there but DIMA's attempts to establish whether Mr X has permanent residency rights in Malta have been unsuccessful.
8. DIMA planned to seek permission for the United Nations High Commissioner for Refugees (UNHCR) to intervene in Mr X's case. In November 2005 Mr X refused his permission, which is required to involve the UNHCR.

Ombudsman consideration

9. DIMA report to the Ombudsman under s 486N dated 22 December 2005 (received 12 January 2006).
10. Ombudsman staff interviewed Mr X on 21 February 2006 at Villawood IDC. Mr X speaks English.
11. Medical reports dated 7 March 2005 and 11 April 2006; a Professional Support Services (PSS), Psychology Summary Report dated 20 February 2006; an International Health and Medical Services (IHMS) Report dated 8 March 2005; a PSS letter of referral to Bankstown [Hospital] Accident and Emergency dated 27 May 2005; a Bankstown Hospital Emergency Department patient record dated 29 June 2005; a NSW Health Banks House Discharge Summary dated 28 September 2005. The Ombudsman also viewed a letter from Mr X dated 6 March 2006 and Ombudsman complaint files for Mr X dating from September 2004.
12. Telephone interview with a friend of Mr X, 23 March 2006.

Key Issues

Health and welfare

13. Dr Y in the IHMS report provides diagnoses of '*Chronic Delusional Disorder*', '*chronic dental pain*' and '*pains in back and shoulder*'. He stated '*At various times Mr X has behaved strangely and often aggressively. During an external assessment he described some delusions in which he was controlled by GSL staff. He has been sent twice to Bankstown Hospital Mental Health Service. He was diagnosed with delusional disorder but was not felt to meet criteria under the Mental Health Act for ongoing inpatient treatment. Bankstown recommended that his mental state be monitored at Villawood. He has regularly refused to see PSS staff and the visiting psychiatrist. He requested to see an external psychiatrist that he regarded as being impartial and I understand that DIMA were facilitating this*'.
14. Dr Y concluded '*In light of the above [report] it is likely his conditions would be better managed in the community. However, it is also likely that he will also be unhappy with external assessments and is likely to regularly change health providers. Ideally, if he were in the community, he would have a single GP to case manage him and hopefully enable further mental health review as necessary*'.
15. Dr Z, an external General Practitioner, assessed Mr X. In his report (7 March 2005) Dr Z stated that Mr X's pain had not been able to be accounted for despite dental x-rays and had become worse since being in detention. He reported that the pain complaints were '*very generalized*' and '*his complaint and description of his headaches and dizziness are similarly vague. On further questioning it became apparent Mr X was convinced the officers at the detention centre had control over his symptoms. He talked of officers causing the headaches, dizziness and toothaches by using a microchip possibly planted in his teeth. He also considered they may have been manipulating his pain through watches they were wearing or electronically by their mobile phones. He did not readily focus on the paranoid thoughts, but on the pain resulting from his delusions. I believe he does display psychotic ideation, and as such, my only recommendation is that Mr X be formally assessed by a psychiatrist.*'
16. Mr X was sent twice to Bankstown Hospital, on an involuntary order under the *NSW Mental Health Act 1990*, on 29 June 2005 and on 23-28 September 2005. Villawood IDC staff had become concerned that he was paranoid, delusional and aggressive. On 29 June, he was assessed at the Emergency Department and not admitted; he was given a provisional diagnosis of Paranoid Delusional Disorder. On 23 September 2005,

he was admitted to Banks House, diagnosed with Delusional Disorder and offered a voluntary trial of antipsychotic medication that Mr X refused. The Discharge Summary concluded *'he did not appear to pose a sufficient risk of harm to justify involuntary medication'*. Mr X was returned to Villawood IDC with advice *'to continue to monitor behaviour and mental state'*. On return, Mr X contacted police and reported that he had been assaulted in the process of transfer. He also, erroneously, reported that he had had a heart attack.

17. Mr X has made constant complaints to DIMA on his dental health, which have been extensively investigated. Some treatment for dental abscesses was provided and no clear cause has been found for his pain. IHMS Progress Notes (8 April 2005) indicate that Mr X was recommended by a dentist for root canal therapy and a surgical procedure to remove infection in the root of a tooth. The progress notes indicate that he was not covered for root canal therapy under the then current departmental policies.
18. Ombudsman staff interviewed Mr X on 20 February 2006. He was neatly dressed. He was cooperative and pleasant, vague or guarded in his responses, and declined to answer some questions. Mr X presented as an intelligent man and claimed he has a Degree in Engineering. Mr X reported having worked in several countries as a civil engineer and chef before arriving in Australia. He stated that he was unable to sleep and was being made to stand for up to 24 hours and was illegally in a secret torture centre. He wanted to stay at Villawood IDC and be quiet. On 6 March 2006 the Ombudsman's office received a fax from Mr X that contained copies of multiple recent complaints made to DIMA and GSL. Mr X stated he felt *'unusual teeth pain more than 48 hours [sic]'* and that he was being punished and experimented on by DIMA staff. Mr X telephoned the Ombudsman that day and reported that *'someone was listening in to our interview'* (with Ombudsman staff on 20 February 2006) and that he had pain since the interview because he had talked about his detention experiences.
19. Mr X has made complaints to the Ombudsman about his situation at Villawood IDC since March 2004, with additional reference to toothache from September 2004. He has at times sent extensive letters, with the recurring themes of torture, *'teeth pain waves'* and his distress. DIMA, IHMS and PSS have identified a mental disorder and have twice sought involuntary assessment. NSW Health considered that Mr X's condition at the time of referral did not *'pose a sufficient risk'* to warrant involuntary treatment.
20. Ombudsman staff contacted Dr Z, who provided a report (11 April 2006), advising that he had *'seen and examined Mr X on 5 separate occasions [most recently on 3 April 2006] ... It is my opinion, Mr X has a psychiatric disorder with fixed paranoid ideation and delusions that are causing him considerable distress. I believe he should be receiving professional psychiatric care'*.
21. Mr X's Delusional Disorder may be a long-standing condition. He had no fixed abode and was living in his car prior to detention. He wrote to the Ombudsman (13 September 2005) explaining that he had presented to DIMA in June 2003, wanting DIMA permission to change his name to P in order to minimise harassment he claimed he was then experiencing. The IHMS Progress Notes show that on 21 April 2005, Mr X reported to Dr Q (IHMS) that he had experienced *'unusual headaches'* for the previous six years.

Attitude to removal

22. The Ombudsman is unaware as to the full reasons why Mr X will not cooperate in a return to Turkey. The Ombudsman is aware that he does not wish to undertake military service. Mr X initially indicated that he would be willing to return to Malta, where he said he had lived. However no evidence has been forthcoming that identifies him as a citizen of Malta or having a right to permanently reside there. He has lost his Turkish citizenship and is unwilling to re-apply.

Criminal history

23. DIMA reported that, on 25 July 2003, Mr X was sentenced to five months and 30 days imprisonment as a result of his conviction for assaulting and resisting a police officer.

Links to the community

24. Ombudsman staff interviewed Ms C, who said that she had been a friend of Mr X for seven years. She visits him weekly at Villawood IDC. Ms C stated that Mr X's mental health had clearly deteriorated, which she attributed to his being in detention. Ms C said that, if he were released, she would offer accommodation, food and support to Mr X. Ms C stated that she held documents that showed that Mr X had been commended for his work abroad as a civil engineer.

Ombudsman assessment/recommendation

25. Mr X's case is complicated in that it appears he has not been an easy person for health provider and detention centre staff to work with. Detention appears to have acted as a focus for his distress and complaints.

Mental health and capacity

26. The Ombudsman is concerned that it appears Mr X may lack the capacity to provide consent to treatment and, by extension, to refuse treatment. It is important to note that he reports great subjective distress and pain. Were he to be in the community, it is possible that Mr X would languish in this condition. However, when he is in detention and a duty of care exists, it is hard to reconcile that he has remained for so long in a distressed state, without the potential benefit of treatment. The identification and proper focus on Mr X's psychiatric needs appear to have been side-tracked by his complaints of 'teeth pain waves' into circuitous dental investigations. A parallel process of exploring and more assertively treating *both* the possible physical and the apparent psychiatric condition would seem to be indicated.
27. Mr X's mental state varies over time, complicating his management. The hospital opinion in September 2005 was that care should not be forced and that monitoring of Mr X's condition should continue. IHMS reported to the Ombudsman that '*Mr X has been booked 9 times with the onsite psychiatrist but has refused to attend any appointments*'. DIMA, in a letter to the Ombudsman (16 January 2006), reported that '*Mr X's health has improved*' and ruled out consideration of a residence determination stating '*medical advice is that his health does not necessitate his living in the community*'. The recent IHMS report states '*it is likely his conditions would be better managed in the community*'. By his self-report, and by perusal of his voluminous complaints to GSL/DIMA and to the Ombudsman, it appears that Mr X's subjective level of distress and experience of pain is high and has recently worsened.
28. There are parallels between this case and the case of Ms Cornelia Rau. For example, Mr X was transferred to hospital for assessment on two occasions, as a person with limited insight. The Palmer Report (July 2005) made specific recommendations that significant collateral history should be sought, compiled from across the detention services, and provided to clinicians to aid such an assessment¹. Mr Palmer raised the

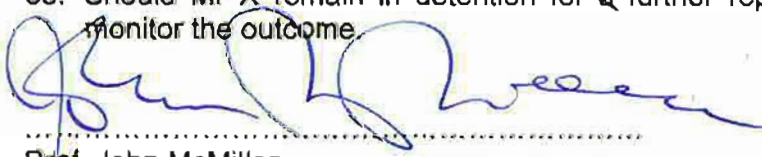
¹ 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau', July 2005, Recommendations 6.2, 6.3 & 6.4.

importance of clinical leadership, an assertive approach to care, and the need to actively review cases where problems continue, despite attempts to provide care².

29. There is a principle in mental health care of the *right to treatment* for mentally ill people who lack the capacity to decide to accept treatment. There is provision in the *NSW Mental Health Act* for involuntary treatment in the community, via *Community Counselling Orders*. This is a clinical decision. While it may be unusual and complicated to use these provisions in a detention centre setting, they may well represent a valid treatment option, given Mr X's lack of consent.

Capacity to make decisions in immigration matters

30. From an examination of his case, it is reasonable to infer that, in the presence of his psychiatric disorder, Mr X has a restricted ability to cooperate in his immigration matters. At the same time, DIMA has needed him to participate in obtaining travel documents, in re-applying for Turkish citizenship etc. The resultant stalemate has left Mr X in detention where his (possibly pre-existing) psychiatric disorder appears to have worsened.
31. The Ombudsman **recommends** that Mr X's case be referred promptly to an independent, senior psychiatrist for a thorough assessment and case review, and that DIMA coordinate, via the IHMS and PSS, the preparation of a comprehensive and concise summary of Mr X's presentation and history as an important aid to that assessment. The Ombudsman requests that a copy of this report also be provided with the referral. The assessment should address whether Mr X has the capacity to manage his immigration or health matters, and provide advice on the need for, and strategies for, further involuntary assessment or treatment. After assessment, referral to the NSW Public Guardian may be indicated. The assessment should also address the appropriateness of the immigration detention environment for managing Mr X's psychiatric condition.
32. The Ombudsman **recommends** that, following the psychiatric assessment, the Minister consider using her detention intervention powers to facilitate the most appropriate living arrangements for Mr X while his immigration matters remain unresolved. The Ombudsman notes the offer of accommodation and support that has already been made by Ms C if a residence determination were to be considered appropriate.
33. The Ombudsman **recommends** that, dependant upon the outcome of the psychiatric assessment, DIMA approach the Turkish Ambassador to determine whether the requirement to complete military service can be waived on psychiatric or diminished capacity grounds, in the event that Mr X reapplied for Turkish citizenship. Such an undertaking may assist in facilitating Mr X's cooperation with removal options in the future.
34. The Ombudsman **recommends** that, if in Mr X's case root-canal therapy is indicated, DIMA consider providing this.
35. Should Mr X remain in detention for a further reporting period, the Ombudsman will monitor the outcome.


Prof. John McMillan
Commonwealth and Immigration Ombudsman


Date

² 'Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau', July 2005, Section 6.5.2 *Leadership*.