

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 066/06*

## **Principal facts**

### *Personal details*

1. Mr X is a 45-year-old citizen of India, and has been in Australia since 1986. His mother and two brothers reside in Australia and are Australian citizens. He has one sister in India and one in Malaysia, though he has lost contact with them. In Australia, he has also had three other identities.

### *Detention history*

2. Mr X was detained by the Department (DIMA) on 16 February 2004, pursuant to s 189(1) of the *Migration Act 1958*. He was placed in Maribyrnong Immigration Detention Centre (IDC) and transferred to Baxter Immigration Detention Facility (IDF) in March 2004. He was admitted to Glenside Mental Hospital on 24 December 2005 for in-patient care and treatment. Following discharge from the hospital on 17 March 2006, he was transferred to Villawood IDC.

### *Visa applications*

3. Mr X entered Australia on a one week visitor visa (November 1986); application for Refugee Status/Domestic Protection (Temporary) Entry Permit refused (November 1991); application for a Resolution of Status visa lodged (November 1997); Bridging visas (BV) held (October 1998-July 1999); further BVs refused (February and August 2004); refusal decision affirmed by the Migration Review Tribunal (March 2004); judicial review applications dismissed by the Federal Magistrates Court (FMC) (August 2004) and the Full Federal Court (November 2004); Ministerial intervention requests under s 351 denied (8 requests between February – December 2005); s 48B request denied (December 2005); a further s 351 submission was lodged by Mr X's migration agent (March 2006) which remains outstanding.

### *Current immigration status*

4. Mr X is currently detained in Villawood IDC. DIMA advises that a detention intervention submission is currently being prepared for the Minister.

### *Removal details*

5. DIMA advises that Mr X has been uncooperative with removal efforts; DIMA holds Mr X's Indian passport (valid until 2009) but has not succeeded in facilitating his removal. A scheduled removal in November 2005 was aborted when Mr X created a disturbance at the airport. DIMA state that any future removal plans would be subject to his fitness to travel.

## **Ombudsman consideration**

6. The DIMA report to the Ombudsman under s 486N is dated 3 March 2006.
7. Ombudsman staff interviewed Mr X at Glenside Hospital on 7 March 2006.
8. The Ombudsman has been presented with a report from International Health and Medical Services (IHMS) dated 13 March 2006 (prior to placement in Villawood IDC); a co-authored psychiatric report from the Consultant Psychiatrist at Glenside Hospital, Dr A, and the Senior Psychiatric Registrar, Dr B dated 14 February 2006; a letter from Dr B to DIMA dated 28 February 2006; a letter from Dr A dated 15 March 2006 to DIMA; a letter from Dr C, General Manager Early Intervention and Acute Services, Glenside Hospital

dated 17 March 2006 to DIMA; a submission from Ms D, Office of the Public Advocate South Australia, dated 17 March 2006; and a submission from Mr X's migration agent, Mr E, from the Asylum Seeker Resource Centre (ASRC), dated 23 March 2006 (including a s 351 submission to the Minister) and another representative of the ASRC dated 9 May 2006.

## Key issues

### Health and welfare

9. As a result of a hunger strike, Mr X was psychologically assessed and admitted to the Glenside Psychiatric Hospital on 24 December 2005. Mr X was diagnosed by the consulting psychiatrists at Glenside Hospital, Drs B and A, with '*chronic, low-grade, untreated paranoid psychosis which has impaired his ability to successfully negotiate his way through the immigration process*' (14 February 2006). They go on to say in their report '*He displayed persecutory delusions [of being poisoned] together with delusions of reference and delusional misinterpretations of physical symptoms. He also had guilt feelings together with fleeting suicidal ideation ... His judgement has been influenced by the delusions*'. Drs B and A further stated '*A case could be made that he would have been successful in his application for a permanent visa, had his mental illness been recognised and treated at an earlier stage. He should not be returned to immigration detention because this will cause a relapse of his paranoid psychosis. He should be allowed to live with his family in Sydney; with follow up provided by the local community mental health team*'.
10. Mr X expressed similar concerns to Ombudsman staff, stating that his food had been '*tampered with*' and '*poisoned*' in Baxter IDF. Mr X advised that he was comfortable in Glenside Hospital, explaining '*you're a bit more relaxed [here], you're not in the fear. I was in fear constantly, in fear every day but I couldn't do anything, because its just like "they've got me"*'.
11. Dr B reported on 28 February 2006 that Mr X had sufficiently recovered that he no longer required acute inpatient psychiatric care and was fit for discharge; however, Dr B recommended that he not be sent back to Baxter as it was highly likely that his mental state would deteriorate in that environment. Dr B noted, '*ideally, he should be allowed to stay with his mother in Sydney*'. Dr A confirmed in his letter of 15 March 2006 that Mr X was no longer in need of treatment in an acute psychiatric inpatient setting and was to be discharged.
12. Dr C, the General Manager of the unit where Mr X was being treated, clarified in a letter to DIMA on 17 March 2006 that Dr B worked in his unit under the direction and supervision of Dr A and that opinions provided by Dr B are the opinions of the responsible psychiatrist. Dr C pointed out that Doctors A and B's report that indicated that Mr X '*should not be returned to immigration detention*' was clarified in a subsequent report dated 28 February 2006 from Dr B as '*we recommend that he not be sent back to Baxter as it is highly likely that his mental state will deteriorate in that environment*'. Dr C also stated that Mr X was fit to travel but anxiety may occur if he travelled by air and recommended an anxiolytic agent be made available for use. Dr C noted there was no health impediment to travel by road.
13. Mr X was discharged from Glenside Hospital on 17 March 2006 and transferred to Stage 1 at Villawood IDC. DIMA advised that Mr X was placed in Villawood IDC following discharge, rather than Baxter IDF, because of the medical advice it received that he not be returned to Baxter IDF, and because of his family support and connections in Sydney. DIMA further advised that a case manager has been appointed to Mr X's case.
14. The ASRC, in submissions to the Ombudsman dated 23 March 2006 and 9 May 2006, advised that Mr X commenced a hunger strike shortly after his placement in Villawood IDC. The latter submission (9 May 2006) indicated that Mr X had refused oral intake of

food for the past 52 days and only accepted fluid provided by his mother or brother during their visits.

15. The Ombudsman's office has investigated the transfer and placement at Villawood IDC following the receipt of a complaint.

#### *Outstanding criminal charge*

16. DIMA reported that Mr X has a warrant outstanding in South Australia for his arrest over an alleged breach of an apprehended violence order. The report states *'On 8 June 2005 a warrant for Mr X's arrest was issued. A member of the public had a restraining order placed on Mr X for stalking her prior to his detention. She has continued to receive phone calls from Mr X since his detention, and has notified the department that if Mr X is released she will be concerned for her welfare. The South Australian police have advised that they will act on the arrest warrant if Mr X is released from detention'*.
17. In the Departmental s 351 submission to the Minister (undated), it was stated *'It should be noted that until Mr X answers any outstanding charges, he does not pass the s 501 character test and under normal circumstances he could not be issued with a permanent visa. The department has serious concerns with regard to Mr X's character not only in relation to the harassment and stalking of an Australian Citizen, but also in relation to identity fraud given the complexities involved in obtaining concurrent drivers licences in different names'*.
18. The medical opinion advanced by Drs B and A provides an alternative view of Mr X's character and states, *'His illness is easily treatable and he poses no threat to the community. On the contrary, he is a dutiful son and responsible brother who is able to support other family members, who are already Australian citizens. He has responded well to treatment and is expected to continue to do well with regular treatment and follow up. He is capable of independent living and gainful employment'*.
19. Mr E of the ASRC has submitted that, *'In relation to the intervention order, Dr B is of the view that paranoid delusions may have caused the applicant to behave in an intimidating manner towards a person who subsequently took out an intervention order against him. It is Dr B's professional view that the applicant's paranoid condition is easily treated and that the applicant poses no threat to the community'*.

#### *Family concerns*

20. Mr X's elderly mother and two brothers live together in Sydney and all three are Australian citizens. Mr X's father is deceased, allegedly violently murdered in India by members of the DMK party in 1989.
21. One brother (V) is the legal guardian of the other (N) who requires full time care because of a permanent disability suffered as a result of an assault when working as a taxi driver in June 2004. Mr E, and other supporters, state that he is in a permanent vegetative state. Submissions seeking the Minister's discretion to grant Mr X a permanent Carer's visa have been rejected on a number of occasions. In the latest submission to the Minister seeking her s 351 intervention (20 March 2006), Mr E states *'(V) is currently supporting (N) as best as possible but is struggling to support his brother as well as supporting his wife, his young daughter and his 70 year old mother. ... The grant of residency to the applicant would take significant pressure off (V) who could then share some of his considerable care burden with the applicant at minimal cost to the Australian community'*.
22. Mr E advised *'[T]he applicant's mother is extremely distressed by the conditions of two of her sons; one in a permanent vegetative state and the other in a psychiatric institution/immigration detention centre. These matters are placing pressure on her already fragile physical health. He[r] treating doctor, Dr F, states that she suffers from polyarthritis, cataracts, hearing defects and depressive psychosis'*.

### *Attitude to removal*

23. Mr X has expressed a strong subjective fear of returning to India, stating that he will die there. He believes that the people who killed his father will also kill him. Mr E states that should Mr X be removed to India, *'he would arrive without assets, friends or any type of meaningful social network. His pre-existing psychological problems would be significantly exacerbated by his loss of family contact.'*

### *Other detention Matters*

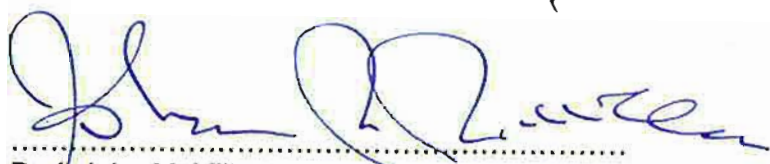
24. During his interview with Ombudsman staff, Mr X expressed strong emotion against Baxter IDF, stating: *'that place is torture'* and *'they think they own you'*. He said that he felt *'victimised'* there and struggled to survive there as his food was being tampered with corrosive acids. Mr X advised that although he was allowed to cook once a week, this was not enough to reduce the problems he saw or felt in Baxter IDF.

### **Ombudsman assessment/recommendation**

25. Mr X's case raises a number of competing but compelling considerations. He has, on the one hand, been unlawfully in Australia for 20 years. He has made a number of unsuccessful applications to the Department, the Minister, and tribunals and courts to change his immigration status. He has been uncooperative with removal efforts and physically resisted the action taken by the Department in November 2005 to effect his removal from Australia. Mr X remains in detention as a direct consequence of that train of events.
26. Mr X has recently been diagnosed in February 2006 with a paranoid psychosis; it is possible that his condition dates from a much earlier time and has been untreated until recently. Drs B and A opine that a case could be made that his mental disorder may explain why Mr X has remained unlawful despite 20 years in Australia. The Ombudsman notes that his family members are Australian citizens. Mr X reported that his family sought citizenship during an amnesty declared by the Australian Government but, at the time, he was too depressed to act within the time frame and missed out. If so, Mr X's mental illness may have prevented him from obtaining Australian citizenship.
27. Following release from Glenside on 17 March 2006, Mr X was placed in the custodial environment of Stage 1 at Villawood IDC, the maximum-security area of the detention facility. While his consulting psychiatrists had originally advised against a return to an immigration detention centre as this might cause a relapse in his paranoid psychosis, later medical advice clarified that a return to Baxter IDF was not supported as a suitable placement. The Senior Psychiatric Registrar suggested Mr X be allowed to stay with his mother in Sydney. Although Mr X may no longer require acute mental health inpatient care, the custodial environment of a detention facility appears to have coincided with deterioration in his mental state. DIMA has confirmed that Mr X has not eaten food supplied by the detention services subcontractor since he arrived in Villawood IDC but that his brother supplies him with food once a week. DIMA have reported that it continues to monitor his wellbeing and that his medical condition can be managed within the detention environment.
28. The Ombudsman is not aware of any current action or proposal to remove Mr X from Australia. It is therefore likely that he will remain in Villawood IDC, unless a decision is made to place him in an alternative detention arrangement or to vary his immigration status. The Ombudsman notes that a submission is currently being prepared for the Minister regarding her detention intervention powers. In the Ombudsman's view, one option that should be canvassed in that submission is a Residence Determination to place Mr X in alternative detention pending any other action for his removal from Australia. The considerations that weigh in favour of that option include Mr X's troubling reaction to the custodial environment of an IDC; the recent medical opinion on Mr X's disorder, including the assessment that he currently poses no threat to the Australian community; the connection and level of support he will have from his Australian citizen

brother and mother; and the adverse impact his continuing detention in an IDC is having on his family. If Mr X is placed in the community under a Residence Determination, consideration will need to be given to continuing support and treatment that he may need in relation to his diagnosed mental health problems.

29. It is understood that DIMA currently has concerns about placing Mr X in alternative detention arrangements because of his outstanding warrant. While the Ombudsman appreciates the importance of this issue, Mr X has not yet been given the opportunity to answer this charge. The Ombudsman notes that Mr X's previously untreated paranoid psychosis may have contributed to his behaviour that resulted in the issue of the warrant. It would appear that until this matter is resolved, the charge may persist as a barrier to the resolution of Mr X's immigration status, even though he has not been convicted of an offence. The Ombudsman **recommends** that DIMA consult with South Australian Police about how best to resolve this issue.
30. Finally, the Ombudsman **recommends** that the Minister make a decision on Mr X's s 351 request and other submissions as soon as possible, and in any case not later than the statutory period prescribed in s 486P of the Migration Act for tabling this report in Parliament (viz, within 15 sitting days of receiving the report).



Prof. John McMillan  
Commonwealth and Immigration Ombudsman

18/5/06  
Date