

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 097/06*

**This is the third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first and second report (53/06). The Ombudsman's report was sent to the Minister on 6/3/06 and tabled in Parliament on 10/5/06. This report updates the material in that report and should be read in conjunction with it.**

## **Principal facts**

*Visa applications*

1. On 15 June 2006, the Full Federal Court (FFC), by consent, allowed an appeal in relation to earlier decisions of the Federal Magistrates Court (FMC) and Refugee Review Tribunal (RRT). The FFC quashed the decision under appeal and remitted the matter to the RRT for reconsideration.
2. A submission is currently with the Minister for possible consideration of her detention intervention powers (April 2006).

*Current immigration status*

3. Mr X remains in immigration detention at Villawood Immigration Detention Centre (Villawood IDC). He has been in detention since May 2002.

*Removal details*

4. Mr X is not eligible for removal, pending the outcome of a future RRT hearing and any possible associated litigation.

## **Ombudsman consideration**

5. A further report from DIMA to the Ombudsman under s 486N was dated 7 July 2006.
6. Ombudsman staff interviewed Mr X by telephone with the assistance of a Mandarin interpreter on 16 August 2006.

## **Key issues**

*Health and welfare*


7. At interview with Ombudsman staff, Mr X said that his mental health was normal and his physical health was fine, and added that he was soon to have 11 teeth extracted.

## **Ombudsman assessment/recommendation**

8. In Report 53/06 the Ombudsman discussed whether Mr X should remain in immigration detention while his immigration status is resolved. The Ombudsman noted the health risks associated with indefinite detention, that Mr X is not considered a threat to the Australian community, and that he does not appear to present a significant security risk. The Ombudsman recommended that the Minister consider granting Mr X an appropriate visa, such as a Removal Pending Bridging Visa (RPBV), subject to conditions that the Department deemed

necessary to ensure that he did not abscond, while the issues concerning his immigration status and removal from Australia were resolved.

9. Mr X was not granted a RPBV. In her statement to Parliament in relation to Report 53/06 the Minister noted *'This person has outstanding litigation before the courts and I note that his time in detention has been primarily due to the pursuit of review of negative decisions'*. Since that time the FFC has, by consent, quashed decisions of the FMC and the RRT and remitted Mr X's matter to the RRT for reconsideration.
10. The length and continuing nature of Mr X's detention continues to be a matter of concern. Mr X has now been in immigration detention for over four years. He has a new RRT hearing pending and it may be some time before his immigration status is finally resolved. During the currency of his litigation Mr X has been uncooperative with completing travel documents relating to any removal from Australia; even if he is unsuccessful in his present RRT hearing, there may be an additional delay before travel documents can be obtained for him from the PRC. In summary, there is likely to be further considerable delay before Mr X is either released lawfully or removed to the PRC. The Ombudsman notes that Mr X's partner, Ms Z, was granted a BVE in association with the FFC appeal on 2 February 2006. The Ombudsman **recommends** that the Minister make a decision on the April 2006 submission in relation to her detention intervention powers as soon as possible and in any case not late than the statutory period prescribed in s 486P of the Migration Act for the tabling of this report in the Parliament (*viz*, within 15 sitting days of the Minister receiving this report). In light of the above considerations, the Ombudsman again **recommends** that Mr X be granted a RPBV to enable his release from detention.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date