

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 098/06

This is the second s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (27/06). The Ombudsman's first report was sent to the Minister on 10 January 2006 and tabled in Parliament on 29 March 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Current immigration status

1. Mr X remains at Baxter Immigration Detention Facility (IDF). He has been in immigration detention since 5 October 2003.

Removal details

2. The Department (DIMA) advises that removal considerations are deferred pending the outcome of Mr X's current Federal Court (FC) matter.

Ombudsman consideration

3. The Ombudsman received a second s 486N report from the Department, dated 19 April 2006, and sighted a Departmental submission to the Minister regarding Mr X, dated June 2006.
4. Ombudsman staff interviewed Mr X at Baxter IDF on 15 June 2006.
5. Ombudsman staff sighted a DVD, dated 15 June 2006, submitted by Mr X to the Ombudsman, containing Mr X's records and various letters; a letter by a psychiatrist Dr Y dated 13 April 2006; and an International Health and Medical Service report by Dr Z dated 26 April 2006.

Key issues

Health and welfare

6. The Ombudsman's first s 486O report drew attention to Mr X's possible psychiatric illness, the appointment of a court *tutor* and the uncertainty raised by Dr Y, who diagnosed a personality disorder and *'possibly a delusional disorder'*. The Ombudsman suggested that this diagnostic uncertainty be resolved.
7. Dr Y assessed Mr X in both January and April 2006. His report indicated that Mr X is now on an increased dose of an antidepressant and that this appears to have been beneficial. Dr Y reported *'I felt that Mr X appeared clinically well and seemed to be coping reasonably well with the stress of detention'*. He noted *'there were no perceptual disturbances and no delusions'*. He noted Mr X's mood was bright and optimistic, and said he had insufficient information regarding his immigration circumstances to gauge whether Mr X's optimistic mood was realistic. Dr Y cautioned *'One would need to be mindful that his bright mood is partly due to his feeling of hope regarding his future – then if this hope were to be dashed for example by hearing bad news about his visa application then one would expect a rather rapid deterioration in his mood'*.
8. Mr X continues with a court appointed tutor, as he was considered in May 2005 to be a *'mentally disabled person by virtue of a narcissistic and paranoid personality disorder'* and *'incapable of managing his affairs in respect of his Federal Court proceedings'*.

9. At interview with Ombudsman staff Mr X appeared to be more settled than he had been at the previous interview. He seemed to be sustained by a belief in his innocence and that the courts have erred. He stated that DIMA was collaborating with the person whom, he believed, had falsely accused him of sexual assault, of which he had been convicted and that led to the cancellation of his visa under s 501. He reported experiencing a considerable amount of stress in detention.
10. Mr X had previously raised concerns regarding a skin condition. He said he has seen a dermatologist, has had several tests, and has been diagnosed with an allergic skin reaction as a stress-related condition. He was unsatisfied with the outcome of treatment for his skin condition, saying that his rash had persisted. He said that the tablets for this condition were making him extremely drowsy and he felt *'half-drunk'* at times, with low energy. He reported ceasing his tablets for a few days prior to interview with Ombudsman staff so that he could be alert. Even so, at interview his speech was slightly slurred – he attributed this to sedation.

Attitude to removal

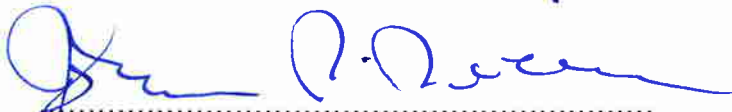
11. The Department advised that Mr X has refused to consider voluntary return to Sri Lanka. He told Ombudsman staff that he expects the current FC proceedings will be resolved in his favour and he is waiting for the outcome.

Ombudsman assessment/recommendation

12. The Minister, in her response to the Ombudsman's tabled report (28 March 2006) indicated that the arrangements were in place to review Mr X's mental health. Dr Y has reported that Mr X appears to be clinically well; no formal diagnosis was listed and Dr Y recommended continuance of antidepressant medication.
13. Mr X continues to be represented in the FC by a tutor. Dr Y has made no recommendation that this should cease; the Ombudsman therefore infers that Mr X is considered still to be a mentally disabled person. The Ombudsman notes that Dr Y has scheduled a follow-up psychiatric appointment in six months time.
14. Mr X's FC case continues. His court-appointed tutor is seeking review of the second cancellation of his resident return visa, by the then Minister, under s 501. The tutor indicated that the matter is listed for hearing in the FC on 18 September 2006. The tutor expects a decision to be handed down soon after.
15. Mr X is also a subject of DIMA's review of s 501 visa cancellations, pursuant to the Ombudsman's own motion report *Administration of s 501 of the Migration Act 1958 as it applies to long-term residents*. It is expected that DIMA will soon report back to the Ombudsman on its review of s 501 cancellations.
16. In Report 27/06, the Ombudsman advised *'An issue the Ombudsman will address in any future report is whether Mr X should be released from immigration detention (for example, on a Return [sic] Pending Bridging Visa) while his immigration status is resolved. In foreshadowing that issue, the Ombudsman notes that Mr X has served his custodial sentence following his conviction, that he resided in the community on bail for a lengthy period without reported incident as far as the Ombudsman is aware, that his period in immigration detention has now been over two years, and that if he does, in fact, have a psychiatric illness it is unlikely that the immigration detention environment will be conducive to any recovery.'*
17. The Ombudsman notes that Mr X has been in immigration detention for over three years, having served five years and three months in prison prior to that – a total period of eight years continuous detention. Dr Y's opinion was that Mr X *'seemed to be coping reasonably well with the stress of detention'*. Mr X advised Ombudsman staff that he was

experiencing considerable stress related to detention and requested consideration for a Removal Pending Bridging Visa (RPBV).

18. The Ombudsman notes that the outcome of Mr X's FC matter is imminent and the Ombudsman therefore makes no recommendation of immediate application. If Mr X is successful, the Ombudsman would expect that he would be released from immigration detention. If Mr X is unsuccessful, the Ombudsman **recommends** that, if there are likely to be significant delays in removing Mr X from Australia, he be released on a Residence Determination or temporary visa until such time as removal can be effected. In this context it is relevant that DIMA has undertaken not to remove people who are subject to the Departmental review of s 501 visa cancellations. The Ombudsman is, however, expecting a progress report on this review from the Department shortly and will consider any future recommendations in light of that report. The Ombudsman notes that, if Mr X were to remain in detention, a further report under s 486N will fall due in October 2006. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon his health and the suitability of continued detention in an immigration facility.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date