

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 102/06

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 (64/06). The Ombudsman's first report was sent to the Minister on 18 May 2006 and tabled in Parliament on 20 June 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 in detention at Villawood Immigration Detention Facility (IDF).

Removal details

2. DIMA advises that there are no removal steps being undertaken for Mr X at this time.

Ombudsman consideration

3. A second DIMA report was provided to the Ombudsman under s 486N dated 7 July 2006. The Ombudsman sighted a DIMA Ministerial Submission on Mr X dated 4 April 2006; a psychiatric report by a Consultant Psychiatrist, dated 18 August 2006; a Professional Support Services, Psychology Summary Report, by a psychologist dated 8 September 2006; a report from DIMA Detention Health Services Branch dated 18 September 2006.

Key issues

Health and welfare

4. Since May 2006, Mr X has contacted the Ombudsman's office numerous times by telephone and fax and expressed his concerns that he is still being tortured and subjected to electric shocks for extended periods (by GSL and DIMA staff) at Villawood IDF. Mr X voluntarily attended an external psychiatric assessment in Sydney on 10 August 2006. Mr X told Ombudsman staff that he had chosen to pay for the appointment, but that the cost may limit his future access to the specialist. Mr X continues to see his external General Practitioner.
5. The Consultant Psychiatrist has diagnosed Mr X as having a Chronic Delusional Disorder with persecutory beliefs. The Consultant Psychiatrist reported that Mr X does not have a Schizophrenic Disorder; he does not display hallucinations or disorganised thoughts. The Consultant Psychiatrist stated that Mr X has a '*marked lack of insight into his condition*' and indicated '*A trial with an anti psychotic medication would certainly be worthwhile*'. The Consultant Psychiatrist stated '*I would accept that Mr X's level of distress and experience of emotional pain is high*'. The Consultant Psychiatrist's opinion was that Mr X lacked the capacity to consent to, or to refuse, treatment and lacked the capacity to weigh such decisions.
6. Detention Health Services Branch advises that Mr X refused an offer of voluntary hospitalisation in September 2006 and guardianship options are currently being pursued by DIMA.

Attitude to removal


7. The Consultant Psychiatrist reported that Mr X did not wish to return to Turkey, that his father was dead and he had no contact with his mother, whom Mr X believed lived in Turkey.

Other detention issues

8. The Consultant Psychiatrist's opinion was that Mr X *'in all probability is also impaired from a psychiatric perspective in appropriately managing his immigration issues'*, that *'Mr X's housing in the detention centre is in all probability exacerbating his emotional distress and contributing to his paranoid delusional disorder'*, and *'the immigration detention environment is not appropriate in regard to managing his psychiatric condition'*.

Ombudsman assessment/recommendation

9. The Minister, in her *Statement to Parliament* (14 June 2006), indicated that she had a submission before her regarding Mr X and that she would consider his case shortly. DIMA advises that on 24 July 2006, the Minister declined to intervene.
10. The Ombudsman's Report 64/06 recommended that *'Mr X's case be referred promptly to an independent, senior psychiatrist for a thorough assessment and case review'*. With assistance from DIMA, and on referral from his GP, Mr X attended a voluntary assessment with an independent psychiatrist. The Consultant Psychiatrist has provided a report that addresses and answers the issues posed in Report 64/06. Detention Health Services Branch advised that the Consultant Psychiatrist supports a further period of assessment and voluntary, or, if necessary, involuntary inpatient treatment for Mr X. Mr X has refused voluntary inpatient treatment. The Ombudsman now **recommends** that DIMA pursue the issue of guardianship for Mr X as a matter of some urgency, to ensure that he obtains the treatment trial recommended by the Consultant Psychiatrist.
11. Report 64/06 also recommended *'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'*. That recommendation was based on the difficult and complicated situation surrounding Mr X: he has lived in Australia for 16 years; he has lost his Turkish citizenship and is unwilling to re-apply (in part, it seems, as he would be required to render military service); he was homeless in Australia when taken into detention in June 2003; he has been diagnosed with a chronic Delusional Disorder; he is refusing to consent to some of the treatment recommended for him; and it is doubtful that he is in a stable mental condition and able properly to consent or refuse consent to treatment. Given the Consultant Psychiatrist's recent advice that the detention centre is in all probability exacerbating Mr X's emotional distress and contributing to his condition, the Ombudsman **recommends** that it is appropriate for the Minister to now consider making a Residence Determination (RD) enabling Mr X's release from Villawood, yet continuing to provide him with the support he needs.
12. After Mr X has been on a RD for several months and has had a period of supported independence, the Ombudsman **recommends** that the Minister review the situation, with the aim of releasing Mr X into the community on a suitable visa (with access to Centrelink benefits and work rights), subject to appropriate reporting conditions, health, and character checks.
13. It appears that until Mr X recovers his decision-making capacity, any immigration matter that requires Mr X's active cooperation will require a guardian.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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