

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 106/06*

## **Principal facts**

### *Personal details*

1. Mr X is aged 34 and a citizen of Iran. He is single. He is in telephone contact with his family, who reside in Iran.

### *Detention history*

2. Mr X arrived in Australia by boat on 2 November 2000 and was detained by the Department (DIMA) pursuant to s 189(2) of the *Migration Act 1958*. He was initially placed in immigration detention at Curtin Immigration Reception Processing Centre (CIRPC). He was transferred to Hakea Prison (September 2001); to Perth Immigration Detention Facility (IDF) (May 2002); to Royal Perth Hospital (October 2002); to Perth IDF (October 2002); to Baxter IDF (May 2003); to Port Augusta Hospital (December 2004); to Baxter IDF (December 2004); and to Glenside Hospital (March 2005). He remained at Glenside Hospital until he was released from immigration detention (July 2005).

### *Visa applications*

3. Mr X applied for a Protection Visa (PV) (March 2001); DIMA refused (April 2001); appeal to the Refugee Review Tribunal (RRT) unsuccessful (November 2001); sought judicial review by filing two applications in the Federal Court (FC); FC consolidated the applications and transferred them to the Federal Magistrates Court (FMC); FMC dismissed application (May 2002); appeal to the Full Federal Court (FFC) dismissed (May 2003); application for special leave to appeal to the High Court dismissed (May 2005).
4. Applied to the FC for an injunction restraining his removal (May 2003); interlocutory injunction granted (May 2003), but later discharged (September 2003); further interlocutory injunction granted (August 2003); later vacated (December 2003); application dismissed by consent (April 2004); applied to the United Nations High Commissioner for Refugees (March 2004); applied to the FC seeking an injunction restraining his detention at Baxter IDF and ordering transfer to a hospital (January 2005); transferred to Glenside Hospital (March 2005); application discontinued (June 2005).
5. Applied to the Minister for an exercise of her discretion under s 417 (November 2003) refused (January 2004); applied twice again under s 417 (February 2005); both applications refused the same month; applied to the Minister under s 48B; accepted an offer to be considered for a Removal Pending Bridging Visa (RPBV) (June 2005); the Minister exercised her discretion under s 48B and allowed him to make another application for protection (June 2005); granted a Temporary Protection Visa (TPV) (July 2005).

### *Current immigration status*

6. Mr X holds a TPV and resides lawfully within the community.

### Removal details

7. DIMA reports that Mr X was offered the Iranian reintegration package in June and September 2003 but both offers lapsed without response.

### Ombudsman consideration

8. The DIMA report to the Ombudsman under s 486N was dated 10 August 2005.
9. Ombudsman staff interviewed Mr X on 9 November 2005 in Adelaide with an interpreter, and spoke to him again by telephone on 19 April 2006.
10. Ombudsman staff sighted a number of documents: a copy of DIMA's submission to the Minister dated 2 June 2005; a medical summary report from the International Health and Medical Service (IHMS) dated 26 August 2005; a psychological summary report from Professional Support Services (PSS) dated 30 August 2005; medical reports from Dr Y (Psychiatry Registrar) dated 23 August 2005 and 6 January 2006; a report from Mr Z (Clinical Psychologist) dated 30 January 2006; a report from Dr A (Psychiatrist) dated 26 July 2005; a letter from Mr X's guardian; a submission from Ms B (Migration Agent) dated 5 January 2006 and a copy of her submission to the Minister dated 17 April 2006 which contained numerous letters of support from members of the community.

### Key issues

#### Health and welfare

11. The medical reports concur that Mr X has major depression and Post Traumatic Stress Disorder (PTSD). When in detention, he had been on suicide and self-harm observation on a number of occasions and attempted to hang himself at least twice. Mr X was admitted to hospital in September 2001, October 2002 and December 2004. He was detained under the *Mental Health Act 1993 (SA)* in March 2005 and admitted to Glenside Hospital. In May 2005, an order was made appointing the Public Advocate his guardian for twelve months.
12. Several of the reports link his serious mental health conditions at least partly to his time in detention. Mr Z notes *'He continues to suffer severe psychological problems, much of whose cause is related to his experiences in detention'*. Dr A states *'the genesis of the PTSD was probably the imprisonment and torture that he experienced prior to escaping from Iran, these difficulties have been compounded by his experiences in detention'*. Mr X said to Ombudsman staff that being held in detention had a bad effect on him and that he *'was just like a dead person'*. He said, *'because of lots of time in isolated rooms by myself maybe I have gotten used to being on my own'*.
13. Mr Z, in his letter to the Minister dated 30 January 2006 asking the Minister to waive the 30 month waiting period before Mr X could be considered for a permanent protection visa, stated that his uncertain situation is contributing to his conditions. The letter advises *'I believe that the security that permanent protection would give him would enable him to address his psychological problems ... if his situation is not addressed as soon as possible, his condition will deteriorate further and he is at risk of irreparable harm'*. In January 2006, Mr Y stated *'I am of the opinion that a prompt response from immigration in regards to his residency status would expedite his recovery ... His recovery from his depression is not able to proceed further till the above has occurred'*. Dr A states *'it won't be possible to fully and effectively treat his difficulties as long as he remains on a TPV. In my opinion it is critical for his ongoing mental health and functioning, for the three year TPV period to be waived and for his application for PPV to be processed without delay'*. She goes on to liken his continuing wait for a visa to a *'powerful, damaging and disabling "psychological torture"'*. Mr X confirmed he was continuing to find life difficult: *'I have quite terrifying nightmares ... behind the fences and*

*not able to see'. He said 'At the moment I really do need help. One night I was under a lot of pressure ... I feel like I go out and throw myself off the jetty and get rid of myself'.*

#### *Attitude to removal*

14. Mr X initially claimed that he was at risk of persecution in Iran because of his political activities. The RRT accepted that he had been involved in political protests, but thought that his political actions were at 'a low level'.
15. In June 2005, the Minister permitted Mr X to lodge another application for protection because he had converted to Christianity and was at risk of being persecuted in Iran. Mr X was ultimately successful in this claim for protection.

#### *Incidents in detention*

16. Mr X said that his elbow was injured while he was at CIRPC (2000-01). He said he had been in a room for two days without any blankets and pillows and he refused to return to his room until he was provided with a blanket. He claimed that four officers forced him into the room and his elbow hit an iron bar. He said he 'screams from the pain' although no injury was evident from x-rays.
17. Mr X described an incident at Baxter IDF when he was transferred to Red One Unit from the Management Unit (April 2004). He said that six officers held, restrained and pushed him, and that his elbow was further injured. This was the subject of a separate complaint to the Ombudsman and a prolonged investigation of this incident has recently been concluded. The Ombudsman recorded a finding of administrative deficiency in relation to the decision to use force. During the investigation, DIMA provided several responses and a videotape of the incident. The detention services provider, Global Solutions Limited (GSL) ultimately provided a letter of apology to Mr X.
18. The Ombudsman's office noted concerns that the GSL officers did not make an adequate attempt at negotiating with Mr X. The applicable policy 'The Use of Force' (GOP 12.11) states *'The use of force can only ever be a last resort. All staff should always seek to achieve the desired objective by discussion, negotiation, persuasion, or simply waiting until a detainee is prepared to comply. However, the use of force may sometimes be required, in order to: ... Enforce an order given by a detention services officer or a DIMA employee where the detainee, having been given every opportunity to comply, has failed to do so, and where the purposes of the order can only be effected thereafter by the use of force'*. Although it is clear from the video-tape and the incident reports that an officer requested Mr X to enter the room a number of times and warned him that he was going to use 'minimum force', only a minute elapsed between the issuing of the first request and the use of force. Throughout, it appears that Mr X was confused about why he was being transferred to the compound called Red One (a higher security compound). The response from GSL acknowledged *'it may have been more appropriate, in the circumstances, to provide him with some time to calm down and to give him further explanation as to why he was there'*.
19. The Ombudsman also noted concerns that the officers applied pressure above the shoulders in seeking compliance from Mr X to enter the room, a practice that has been condemned as dangerous in other jurisdictions. DIMA's response states *'I have been informed by GSL that the use of pressure points to subdue persons is not used within the immigration detention environment and, where possible, any contact above the shoulders is to be avoided. Some circumstances do warrant such action. At the time of this particular subject incident, GSL officers determined that the circumstances were such that the use of contact above the shoulders was necessary'*. The Ombudsman considers that the operational procedure should be amended to ban the use of pressure points above the shoulders.

20. Finally, the Ombudsman noted concerns that neither DIMA nor GSL adequately explained the reasons for his transfer or the nature of Red One to Mr X. The Ombudsman's office had raised concerns with DIMA independently of this case about the use of Red One noting that *'detainees do not appear to have been given clear information about Red One's role and purpose, and what to expect if they are transferred to Red One – a culture of fear appears to have been created around Red One'*. The Ombudsman notes GSL's advice that *'a new Red One Procedure is in place and the Behavioural Management Planning process has changed significantly ... in practice clients that are placed in Red One, are not automatically confined to their room, their placement and conditions are normalised as much as possible'*.
21. In relation to Mr X's claim that he suffered an injury to his right arm, the Ombudsman notes that DIMA provided information that suggests a number of possible causes for Mr X's injury.


#### *Resettlement issues*

22. Mr X is currently on a TPV, which gives him the right to reside in Australia for 36 months, and he is permitted to apply for a further visa at the conclusion of this period.
23. Mr X has been in contact with a woman in Iran but he cannot apply to bring a wife to Australia while he is in on a TPV. He said, *'I want to start getting married ... I have been in contact with my girlfriend for the past five years ... if I have to wait another three years – that's eight years before I can even hope to propose to get married – is that fair to have this kind of life?'* Dr A has commented *'it would be enormously beneficial for him and his family if he and they were able to meet in a third country. He is particularly worried about his mother who is in failing health. However he is unable to work towards such a possible meeting while he remains on a TPV'*.
24. Mr X said that he wants to become educated and work so that he is not a burden on society. He has a Technical Graduate Advanced Diploma in Electrician (Power Management and Distribution), which is not recognised in Australia and to requalify he would have to do a four-year apprenticeship. He says that he has already lost too many years of his life in detention to spend that much time in study. He has completed the Certificate II in Security Operations, as well as courses in welding and wiring, although he noted the cost of studying this course was a burden to him. He is learning English at TAFE and is keen to become proficient but says that he is finding it difficult to concentrate because of his poor health. Mr Z commented that *'His ability to study and work safely and effectively is hampered by the severity of his psychological problems'*.

#### **Ombudsman assessment/recommendation**

25. Mr X spent over four and a half years in immigration detention, primarily as a result of his pursuit of protection. The legal process occurred fairly expeditiously, although the FFC made its judgment on 15 May 2003 and Mr X's application for special leave to appeal to the High Court was not decided until 26 May 2005. The Ombudsman does not attach great significance to the fact that he was eventually granted protection as he was found entitled to protection on a different basis than originally claimed.
26. Of more concern is his experience in detention, particularly the incident in April 2004, in which force was used to relocate him from the Management Unit to Red One. As discussed above, the Ombudsman **recommends** that the operational procedure be amended to ban the use of pressure points above the shoulder when applying force as a last resort. The Ombudsman commends DIMA and GSL's action in amending procedures on the use of Red One as part of the ongoing detention reform program, and GSL's apology to Mr X.

27. Another issue, raised in Ms B's submission to the Minister, is the restriction placed on Mr X that he cannot be considered for a permanent visa earlier than 30 months after he was granted a TPV. In the Ombudsman's view, there is a strong case for this restriction being lifted, and for Mr X being granted a permanent visa: he has lived lawfully in the Australian community since July 2005 when he was granted a TPV; he was detained for nearly 5 years, during which time his poor mental health is reported to have reached a critical level; the medical evidence states that he has serious medical conditions and needs a degree of permanency to recover from these conditions; it appears that these conditions are causing him suffering and are inhibiting his quality of life; the position of apostates in the Iranian community is unlikely to change in the foreseeable future; on his current visa Mr X is unable to meet with his family in a safe third country or marry; and, despite his serious medical conditions, Mr X has made a serious effort to study and integrate into the Australian community. The Ombudsman therefore **recommends** that the Minister consider as soon as possible whether to grant Mr X a permanent visa.
28. Given that Mr X has major depression and PTSD, it would be appropriate for DIMA to consider what medical and casework support it should continue to provide to him.



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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

31 October 2006.  
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Date