

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 108/06*

This is the combined second and third s 486O report by the Ombudsman on Mr X as he remained in immigration detention since the Ombudsman's first report (40/06). The Ombudsman's first report was sent to the Minister on 17/1/06 and tabled in Parliament on 29/3/06. This report updates the material in that report and should be read in conjunction with it.

## Principal facts

### *Detention history*

1. Mr X remained at Villawood Immigration Detention Facility (IDF) until May 2006, when he was transferred to Toowong Private Hospital in Queensland. He was released from detention in October 2006.

### *Visa applications*

2. In September 2005, Mr X applied for a Protection Visa (PV); he was granted a Temporary Protection Visa (TPV) on 6 October 2006.

### *Current immigration status*

3. Mr X is residing in the community on a TPV.

## Ombudsman consideration

4. The Department's (DIMA) further reports to the Ombudsman under s 486N are dated 11 January 2006 (received 18 January) and 10 July 2006.
5. Ombudsman staff interviewed Mr X at Toowong Private Hospital on 28 July 2006, with an interpreter, and with his legal representative Ms Y attending by telephone.
6. Ombudsman staff sighted a number of documents: letters from Ms Y, dated 10 April and 16 June 2006; the United Nations High Commissioner for Refugees (UNHCR) Regional Representative dated 31 August 2006; a medical report from Dr Z of Toowong Private Hospital dated 9 June 2006; and a further summary report from Professional Support Services (PSS) dated 12 July 2006.

## Key issues

### *Health and welfare*

7. In Report 40/06, the Ombudsman noted that Mr X had been provisionally diagnosed with '*a possible delusional disorder – depressive agitated symptoms*', and the prognosis for his improvement was poor while he remained in immigration detention. When he was transferred to Toowong Private Hospital in May 2006, he was diagnosed with '*suffering from a major depressive episode in the context of his detention*'. Dr Z noted, regarding his condition, that it '*is unlikely that it will fully remit while he remains in detention. Under these circumstances, his continued detention remains a significant factor that places him at risk of a relapse*'.
8. Dr Z concluded that his prognosis was poor and he is at risk of developing a recurrent disorder '*the longer he remains depressed, the worse his prognosis would become and it is a possibility that it could set the stage for him developing a recurrent depressive*

*disorder in the future*'. In his interview with Ombudsman staff, Mr X said it would be 'very bad' if he were returned to a detention centre.

9. Ms Y was critical of the decision to transfer Mr X to a facility in Brisbane, given that he has friends and a support network in Sydney. She acknowledged that it might have been the only available facility at a time of crisis but queried why another Sydney-based facility could not have been found when it became clear that Mr X was going to be an in-patient for some time.
10. Mr X has suffered arthritis in his knee and some other minor physical complaints.

#### *Detention arrangements*

11. Mr X expressed a desire for a permanent visa, rather than a temporary option, *'even if I am released, I worry that I will not be able to settle because I will be waiting for something'*.

#### *Character checks*

12. Ms Y states she sent forms for the character clearance to DIMA on 9 September 2005. DIMA indicates that it sent further information to the Australian Security and Intelligence Organisation (ASIO) on 2 March and 28 April 2006. DIMA states that on 9 June 2006, ASIO advised it that Mr X's matter was complex and so could not provide a timeframe for the clearance. Mr X indicated that ASIO officers interviewed him at Toowong Hospital in late July 2006.
13. Ms Y expressed concern about the length of time it was taking for DIMA and ASIO to conclude character checks on Mr X. She wrote to the Inspector General of Intelligence and Security on 10 April 2006 about the importance of ASIO completing the security check as soon as possible. The UNHCR also wrote to DIMA noting *'his security assessment has now been pending over a year'* and urging the Department to *'explore all possible avenues for bringing an end to Mr X's extended confinement'*. Since then, Mr X was granted a visa.

#### *Other issues in detention*

14. Mr X noted that some of his property had been lost when it was transferred from Baxter IDF to Villawood IDF. After the Ombudsman investigated the issue, DIMA agreed to compensate Mr X for some of the missing property but noted they had no record of him owning a television set.


#### *Removal notification*

15. In Report 40/06, the Ombudsman was critical of DIMA's failure to give Mr X 48 hours notice prior to the attempted removal to Syria, as required by departmental policy. It was recommended that DIMA review the policy and articulate the circumstances in which a DIMA officer can depart from the requirement to give 48 hours notice. The Minister's response stated that DIMA reviewed the policies surrounding notification of people in removal cases and *'agrees the process which this person experienced should not reoccur'*. DIMA rewrote the policy and issued Migration Series Instruction (MSI) 408 *Removal from Australia*. Commendably, this policy states that 48 hours notice should be given to a detainee unless a State/Territory Director or SES officer has approved less notice to *'minimise the risk of the person harming themselves, or the risk of the removal being disrupted'*. The policy states that any approval should be in writing and should contain reasons.
16. Of concern, however, is the removal of the previous requirement in MSI 267 to provide notice of removal to a legal representative. The new policy makes no mention of notifying legal representatives, and in fact lists *'Others to notify of removal'* without mentioning lawyers or migration agents. A DIMA officer could interpret this as an inclusive list that

prevents them from notifying a legal representative of a departure. Ombudsman staff have held further discussions with DIMA on this matter and DIMA is further considering the issue.

### **Ombudsman assessment/recommendation**

17. Report 40/06 recommended that the Minister consider granting Mr X a permanent visa. The Ombudsman also recommended that Mr X be released from detention on a Removal Pending Bridging Visa (RPBV) if there was likely to be a delay because of health and security checks. As discussed above, the Ombudsman was also critical of DIMA's failure to give Mr X 48 hours notice prior to his attempted removal to Syria.
18. In tabling the Ombudsman's report in March 2006, the Minister stated Mr X was being considered for a Protection Visa (PV) and that she did not consider it appropriate to release him on a RPBV while security checks were outstanding.
19. Mr X has since been granted a TPV (October 2006). This visa entitles him to reside in Australia for 36 months, and to be considered for another visa at the conclusion of 30 months, or earlier at the discretion of the Minister. Given this is a temporary visa, the Ombudsman reiterates his earlier **recommendation** that the Minister consider granting Mr X a permanent visa. The Ombudsman makes this recommendation taking into account the unlikelihood he will be able to return to Syria and his medical condition, which has worsened since the last report. It is also relevant that Mr X spent almost six years in immigration detention before being found entitled to protection. He was found entitled to protection partly on the basis of information provided by the UNHCR. As discussed in report 40/06, it is arguable that DIMA could have contacted the UNHCR at an earlier stage, given that information from the UNHCR had halted DIMA's first removal attempt. If DIMA had done so, Mr X may have been released at an earlier stage.
20. As discussed above, the Ombudsman also **recommends** that the previous requirement to notify legal representatives 48 hours in advance of a planned removal be reinserted into the policy *Removal from Australia*.
21. Given Mr X's medical condition, it is also **recommended** that DIMA consider providing him with casework support and assistance in accessing mental health support after his release.



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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

6 November 2006  
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Date