

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 133/07

This is a combined second, third and fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (33/06). The Ombudsman's first report was sent to the Minister on 17 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

Visa applications

1. The Department (DIAC) referred a submission to the Minister for the possible consideration of her detention intervention powers (28 March 2006). The Minister declined to intervene. Mr X has no outstanding Ministerial intervention requests or litigation.

Current immigration status

2. Mr X has been detained at the Villawood Immigration Detention Facility (IDF) since March 2002.

Removal details

3. DIAC reports that Mr X is available for removal but is uncooperative with removal attempts and has refused to sign a request for travel documentation. The Indian Consulate has advised DIAC that Mr X needs to complete and sign a passport application and the High Commission's advice is that it will not issue travel documents for unsigned requests.
4. DIAC advises it has continued to liaise with the Indian Consulate-General in Sydney and the Indian High Commission in Canberra in an endeavour to obtain travel documents. DIAC advises that it wrote to the Head of Mission listing priority cases as part of the DIAC Secretary's visit to the Indian High Commission on 31 July 2006. More recent DIAC advice stated that a meeting was scheduled for February 2007 with visiting Indian officials with a view to progressing outstanding requests for travel documentation for Mr X and other Indian nationals in detention.

Ombudsman consideration

5. The DIAC reports to the Ombudsman under s 486N were dated 10 January 2006, 11 July 2006 and 11 January 2007.
6. Mr X was interviewed by telephone by Ombudsman staff with the assistance of a Punjabi-speaking interpreter on 11 September 2006.
7. Ombudsman staff sighted: a Professional Support Services (PSS) psychology summary report dated 14 November 2006.

Key issues

Health and welfare

8. DIAC advises that Mr X continues to participate in recreational, educational and religious activities.

9. At interview Mr X complained of teeth, knee, feet and back problems, and said he was having difficulty sleeping. He claimed that DIAC had not responded to his many requests to see a dentist, and that he had to wait a month for a doctor's appointment.
10. DIAC advised that Mr X is closely monitored by medical staff and, since 5 October 2006, contact with PSS staff has become more regular and frequent. The PSS report notes that there has been no contact with Mr X since 25 October 2006 and that he presents with *'frustration and irritability relating to various complaints he perceived relating to the detention environment'*, and *'distress and grief relating to the recent death of his father'*. The PSS report also notes that the *'prognosis for significant change in his behaviour is poor'*, as he *'demonstrates little insight into his behaviour'*, and *'he is likely to continue to experience anger and frustration unless his complaints are resolved, as defined by his own criteria'*.
11. Mr X was placed on Suicide and Self-Harm watch between 4 and 20 October 2006 following self-harm threats expressed at a meeting with DIAC, the detention service provider Global Solutions Ltd (GSL) and Ombudsman staff.

Detention issues

12. The DIAC report notes that the Ombudsman and the Human Rights and Equal Opportunity Commission have raised numerous inquiries with DIAC subsequent to allegations and complaints made by Mr X. The DIAC report says that investigations conducted by GSL and DIAC found no substance to Mr X's complaints. One of DIAC's responses noted that *'in immigration detention, Mr X has demonstrated a history of aggressive behaviour towards other detainees'*. DIAC advised that Mr X continues to exhibit behavioural concerns and is managed under a behavioural plan and that he has been involved in several incidents in recent months such as an alleged assault on another detainee, a fight with other detainees over the morning paper, a complaint from detainees about him bullying them, verbal abuse of an IHMS staff member, and aggressive and intimidating behaviour toward a GSL officer.
13. The recent DIAC report states that in late September 2006, Mr X was transferred to Stage 1 at Villawood IDF on the basis of intelligence received by GSL. Subsequent to the transfer, Mr X complained that money and jewellery had been stolen from his room, and that GSL was responsible. GSL conducted an investigation and concluded that there was no evidence that GSL was responsible for any loss.
14. Mr X complained to the Ombudsman's office about the missing jewellery and it was concluded that GSL had appropriately handled the matter. We advised Mr X that there was not sufficient evidence to support his complaint and the investigation was closed.

Ombudsman assessment/recommendation

15. The Ombudsman made no recommendations in Report 33/06. The Ombudsman noted that Mr X's application for refugee status had been well tested and he was not found to have a well-founded fear of persecution; that Mr X had been in detention for three years and that it was possible that he could remain in detention for a further indefinite period while DIAC obtain a travel document from the Indian High Commission; medical information suggested the possibility of his health further deteriorating; that there is a risk of Mr X absconding if released from detention; that Mr X's case would shortly be due for reconsideration by the Ombudsman and, if there were no further developments in Mr X's case at that time, the Ombudsman would consider recommending that he be released from detention on a Removal Pending Bridging Visa (RPBV) or that an alternative detention arrangement in the community be made. The Ombudsman also noted that a detailed report would be sought from DIAC on the efforts being taken and difficulties encountered in travel documents being obtained from the Indian Consulate.

16. Mr X will have been in detention for five years in March 2007. DIAC has advised that in July 2005 a submission was put before the Minister for consideration of a RPBV but the Minister declined to use her intervention powers. DIAC has been trying to effect Mr X's removal since the Minister declined.
17. There are currently no impediments to Mr X's removal other than the lack of cooperation by Mr X and DIAC's inability to obtain travel documents. DIAC has kept the Ombudsman informed of its attempts to progress the issue of travel documents with the Indian High Commission. The Ombudsman notes that DIAC recently met with visiting Indian officials in an effort to resolve this impasse. It may be that the discussions with the Indian authorities will now see some timely action to obtain travel documents and Mr X can be removed from Australia without further delay. If this is not the case, however, the Ombudsman **recommends** that an alternative to immigration detention now needs to be considered. As noted in earlier Ombudsman reports, and consistent with published immigration detention principles, it is undesirable that persons remain indefinitely in immigration detention when it has proven difficult to remove them to another country.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

20 March 2007

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Date