

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 135/07*

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 (10/05). The Ombudsman's first report was sent to the Minister on 25 November 2005 and tabled in Parliament on 7 February 2006. This report updates the material in the first s 486O report and should be read in conjunction with it.

## **Principal facts**

### *Current immigration status*

1. Mr X remains detained in Baxter Immigration Detention Facility (IDF).

### *Visa applications*

2. In January 2006, the Department (DIAC) refused Mr X a Protection Visa (PV); the Refugee Review Tribunal (RRT) affirmed the decision (June 2006); DIAC noted a jurisdictional error and withdrew from litigation before the Federal Court, leading to the matter being remitted to the RRT (September 2006).

## **Ombudsman consideration**

3. DIAC reports to the Ombudsman under s 486N are dated 14 January 2006, 10 July 2006 and 18 December 2006.
4. Ombudsman staff spoke to Mr X about his circumstances on 12 September 2006 and 8 October 2006; and to a supporter, a family member, and a legal representative of Mr X on 18 September 2006, 14 November 2006 and 16 November 2006.
5. Ombudsman staff sighted a number of documents: the Minister's Statement to Parliament dated 7 February 2006; correspondence from Mr X dated 22 February 2006, 8 June 2006, 18 September 2006 and 7 November 2006; correspondence from Mr X's legal representative, Mr Y, dated 23 October 2006 and 22 November 2006.

## **Key issues**

### *Issues stemming from previous s 486O report*

6. On 22 February 2006, Mr X wrote to the Ombudsman's office to clarify and provide context on statements made in Report 10/05, including:
  - Mr X remains married to his wife of 29 years, Ms Z.
  - Mr X claims that he has effectively been in immigration detention since October 1999, not October 2001. Although he was moved to the Perth Immigration Detention Centre in October 2001, he claims that he was to be paroled in 1999 and only the actions of DIAC in cancelling his visa lengthened his period in gaol.

### *Health and welfare*

7. Mr X has undergone eye surgery with no current complications noted, and there have been no underlying issues identified from cardiologist appointments. However, there are ongoing issues regarding dentistry and pain in his right leg.
8. Mr X's legal representative, Mr Y, noted that while Mr X and his spouse were able to remain in contact while he was located in Perth, his placement in Baxter IDF makes contact costly and difficult to maintain. He further submitted that the continuing detention of Mr X contravened Australia's obligations under the International Convention on Civic

and Political Rights, given he has been deprived of liberty for more than seven years beyond the date of his initial eligibility for parole.

*Removal details*

9. DIAC advises that Mr X is not currently being considered for removal, pending the outcome of litigation. Although DIAC obtained a one-way travel document for Mr X that has now expired, Mr X has been issued an Australian Certificate of Identity and the British authorities have agreed to his return on this document.
10. Mr X has consistently claimed he is innocent of the offences for which he has been convicted and he fears for his life from the actions of vigilantes should he be returned to the United Kingdom (UK), and would prefer to remain in detention in Australia rather than be removed.

**Ombudsman assessment/recommendation**

11. In Report 10/05, the Ombudsman noted the length of time Mr X had remained in detention and made three recommendations. First, his PV application be considered as quickly as possible; second, that DIAC actively pursue Mr X's removal to the UK; and third, that serious consideration needed to be given to the release of Mr X if removal could not be effected without considerable delay. Since that time, the PV claim has been rejected and litigation surrounding the rejection has prevented any removal action, leaving the matter of the third recommendation.
12. Mr X's deportation order was signed in October 1999. He remained in gaol from then until October 2001 when he was transferred to an immigration detention facility, where he has been for over 5 years. As Mr X has an outstanding RRT matter, which could result in further judicial review, it is unlikely that his removal to the UK will be effected in the near future.
13. The Ombudsman noted concerns in Report 10/05 regarding indefinite immigration detention when it has proven difficult to remove a person to another country. The Ombudsman also noted that Mr X had served his custodial sentence in relation to the crimes for which he was convicted, and made a number of observations about strict safeguards that apply in other detention regimes to prevent indefinite detention. The Ombudsman concluded that *'if satisfactory progress in resolving this matter has not been achieved by the time of our six monthly review of Mr X's case, we foreshadow that, barring any other relevant changes in circumstances, the Ombudsman's recommendation will be that he should be released'*.
14. The Minister noted in her Statement to Parliament on 7 February 2006 that *'Consideration will be given to the appropriateness of continued detention and other options should it transpire that this person may spend further time in detention due to review of the protection visa decisions'*. The Ombudsman has kept this matter under review since that time. It has now been 12 months since the Minister's statement and Mr X remains in detention awaiting the outcome of his protection visa claim. The Ombudsman **recommends** Mr X be granted an appropriate visa, with appropriate safeguards, so he may be released from detention while his immigration status is resolved, and that this take place as soon as possible. In this context the Ombudsman notes that Mr X has a significant amount of family support if he were to be released.

*V. Thom*

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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

*26 March 2007*

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Date