

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 454/08

This is the second s 486O report by the Ombudsman on Mr X as he had remained in immigration detention following the Ombudsman's first report (349/08). The Ombudsman's first report was sent to the Minister on 8 January 2008 and tabled in Parliament on 12 March 2008. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. A combined request under s 417/48B of the *Migration Act 1958* (lodged August 2007), was provisionally assessed as not meeting the guidelines for referral to the Minister (November 2007), further information was received (January 2008 and March 2008). The Department (DIAC) initiated ss 197AB and 195A assessments but they did not meet the guidelines for referral to the Minister (February 2008). The combined s 417/48B request was assessed as not meeting the guidelines for referral to the Minister (May 2008). Mr X's case was considered by the Minister in the review of long term detainees (May 2008) prior to his removal.

Current immigration status

2. Mr X was removed from Australia on 30 May 2008.

Removal details

3. DIAC advises that Mr X did not cooperate with the travel document application process therefore the Peruvian Consulate issued a *Salvo Conducto* (travel document) on 16 May 2008.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 13 February 2008. The Minister's Statement to Parliament was tabled on 12 March 2008.
5. Ombudsman staff interviewed Mr X by telephone on 22 April 2008.
6. Ombudsman staff sighted the following documents: copies of submissions to the Minister from Migration Agent Sr A dated 21 December 2007 and 3 March 2008; a medical summary report by International Health and Medical Services (IHMS) dated 4 February 2008; a psychological summary report by Professional Support Services (PSS) dated 19 February 2008; a report by Emeritus Professor of Psychiatry Prof B dated 14 March 2008; IHMS Psychiatrist Progress Notes dated 26 February, 8 April and 27 May 2008, with an appendix by the IHMS Medical Director; a report from the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) by Clinical Psychologist Ms C and Counsellor Ms D dated 11 April 2008; and an IHMS Health Summary dated 26 May 2008.

Key issues

Health and welfare

7. Prof B stated '*I recently assessed Mr X. In the last 18 months it seems clear he has developed a psychotic illness. He has auditory hallucinations which blame him for his behaviour, discuss political persecution and imprisonment and tell him he has no future.*

He has delusions consistent with his work and hallucinations. For a somewhat longer period, over two years, he has had depression and at times has been suicidal. It would appear he either has a depressive psychosis or a schizoaffective disorder. His psychiatric state requires good treatment and he is currently seeing a psychologist regularly and a psychiatrist. It is highly unlikely he would receive quality care in Peru should he return'.

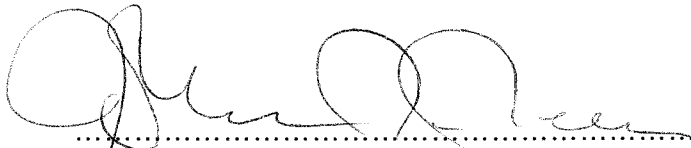
8. The Ombudsman's Report 349/08 recommended that DIAC arrange for Mr X's competence to be assessed in relation to making decisions and his fitness to travel. Following from this, DIAC reports that *'IHMS advise that on 29 January 2008, Mr X's mental competency was assessed by a psychiatrist'*. PSS advises he was competent to represent himself and make informed decisions, and there was no need for a guardian to be appointed. DIAC noted that, based on the Ombudsman's recommendation, it would arrange for a psychiatrist to reassess Mr X's mental capacity at his next appointment on 26 February 2008. The Ombudsman's office has been provided with the Psychiatrist Progress Notes of 27 March 2008 and 8 April 2008 and notes that Mr X's competence was not specifically addressed. The Ombudsman's office raised this concern with IHMS and at Mr X's next psychiatrist appointment on 27 May 2008, which was to assess his fitness to travel, it was recorded in the Psychiatrist's Progress Notes that *'Whilst one would not dispute his current physical and psychological fitness to travel, the anticipated stress of his return to Peru could quite conceivably precipitate decompensation and relapse of his depression and anxiety ... I believe that Mr X is entirely competent to make decisions about his immigration matters'*. The IHMS Medical Director prescribed additional medication for Mr X's return flight and made appointments for him to be reviewed by a GP in Peru to check on his wellbeing, provide him with a referral to local health services and to prescribe further medication for him.
9. At interview with Ombudsman staff Mr X presented as more settled and organised in manner than he did at interview in October 2007. He stated he was taking medication and was unaware of what his formal mental health diagnosis was and said he had not been mentally ill prior to this episode in detention.

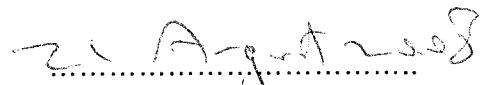
Attitude to removal

10. Mr X said that he feared persecution if returned to Peru. His Migration Agent's December 2007 and March 2008 letters noted that Mr X was presenting more specific detail of what he claims are incidents of persecution that he and his brother experienced in Peru.

Ombudsman assessment/recommendation

11. Mr X was in immigration detention from August 2005 until his removal from Australia in May 2008. Concerns raised by the Ombudsman in Report 349 about Mr X's mental competency and fitness to travel were addressed by DIAC. The Ombudsman notes that his fitness to travel assessment appears to have anticipated and catered for his medical needs both *en route* to his destination and on arrival. The Ombudsman makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date