

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 494/08

This is the sixth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined third, fourth and fifth report. The Ombudsman's combined first and second report (91/06) was sent to the Minister on 17 October 2006 and tabled in Parliament on 4 December 2006. The Ombudsman's combined third, fourth and fifth report (427/08) was sent to the Minister on 1 May 2008 and tabled in Parliament on 4 June 2008. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Visa applications

1. Mr X's case was considered in the Minister's Review of long term detainees (May 2008) with a decision made to progress his removal from Australia. Mr X sought an injunction in the Federal Court against his removal, dismissed (June 2008); the Department (DIAC) received new information concerning Mr X's mental health (June 2008); DIAC reassessed Mr X's circumstances under s 195A of the *Migration Act 1958* (July 2008); finalisation of Mr X's combined s 417/195A request was placed on hold pending removal arrangements being put in place (August 2008); submission referred to the Minister with a decision to grant Mr X a Global Special Humanitarian Visa (GSHV) subject to health and character checks (August 2008).

Current immigration status

2. Mr X remains an unlawful non-citizen detained in the community.

Ombudsman consideration

3. DIAC's further report to the Ombudsman under s 486N is dated 26 August 2008.
4. Ombudsman staff sighted an independent psychiatric report by Dr A dated 17 June 2008 and a medical summary report by International Health and Medical Services (IHMS) dated 13 August 2008.

Key issues

Issues stemming from previous s 486O report

5. In the s 486N report dated 26 August 2006, DIAC clarified that Mr X was charged with indecent assault, not sexual assault as previously reported in February 2008. DIAC also advised that the charge was withdrawn by the South Australian Police in April 2008.

Health and welfare

6. IHMS noted that Mr X's physical and mental health care are managed by a community medical practice. It noted that he was 'assessed at the Emergency Department of Flinders Medical Centre on 13/5/08 and later admitted for several days due to worsening depression and suicidality'. It reported that 'During consultation on 17/6/08 it was noted that he remained depressed, anxious, fearful and prone to suicidal ideation'.

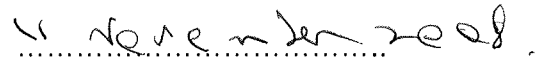
7. Dr A assessed Mr X to be unfit for travel, stating *'I do not anticipate that Mr X will be well enough to travel to India in the foreseeable future. I expect that if he is told of a plan for deportation he will become increasingly depressed, agitated and suicidal, and that he may well act on the suicidal impulses. Despite ongoing psychiatric treatment, combining supportive psychotherapy with antidepressant and anxiolytic medication, he has not stabilised, because of the nature of his predicament and ongoing uncertainty about the future. I consider that no standard medical or psychiatric treatment could contain his reactive depression and anxiety at this stage'*. Dr A concluded that short of intravenous sedation managed by a medical team, he could not foresee Mr X being settled enough for international travel, that Mr X would require intensive medical treatment and that he is *'not sure how the Department of Immigration and Citizenship could arrange adequate post return care, to ensure [Mr X's] safe care and treatment at a time of heightened suicide risk and high likelihood of profound regression'*.

Ombudsman assessment/recommendation

8. Mr X was detained for 20 days between November 2001 and December 2001. Mr X was redetained in March 2004 and has now spent four and a half years in detention, including eight months in Community Detention.
9. The Ombudsman notes that Mr X is being considered for a GSHV subject to health and character checks. The Ombudsman makes no recommendations in this report.



.....
Prof. John McMillan
Commonwealth and Immigration Ombudsman



.....
Date