

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 495/08

This is the third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first and second report (410/08). The Ombudsman's first report was sent to the Minister on 18 April 2008 and tabled in Parliament on 14 May 2008. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. Mr X's request under s 417 of the *Migration Act 1958* initiated by the Refugee Review Tribunal (December 2007) ongoing; the Department (DIAC) initiated a request under s 195A, assessed as not meeting the guidelines (March 2008); request under s 197AB (April 2008) placed on hold pending the Minister's review of long term detainees (May 2008); the Minister determined that he would not make a decision about Mr X's case as part of the review but would consider his case as part of the s 501 review; combined s 417/195A submission referred to the Minister (June 2008), ongoing.

Current immigration status

2. Mr X remains detained at Maribyrnong Immigration Detention Centre (IDC).

Removal details

3. DIAC advises that removal arrangements will progress subject to the outcome of the submission currently with the Minister. DIAC has a further travel document for Mr X valid until January 2009.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 20 August 2008.
5. Ombudsman staff spoke with Mr X by telephone on 12 June 2008.
6. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 13 August 2008.

Key issues

Health and welfare

7. IHMS advises that a Mental State Examination was conducted on 23 May 2008 and no mental health issues were identified.
8. Mr X told Ombudsman staff in June 2008 that he had received a letter from DIAC on 13 May 2008 advising that an outcome to his case was imminent. In August 2008 Mr X said he felt '*despair and frustration*' at the length of time it was taking to be advised of an outcome.


Other detention issues

9. DIAC advises that Mr X's compensation claim regarding property lost in the November 2005 fires at Baxter IDC was refused and Mr X was informed of

DIAC's decision in June 2008. The Ombudsman's office has finalised a complaint from Mr X regarding the delay in processing his compensation request and has recorded a finding of administrative deficiency on the grounds of unreasonable delay.

Ombudsman assessment/recommendation

10. There have been no significant changes to Mr X's status, since the Ombudsman's previous Report 410/08. The Ombudsman recommended in that report that the Minister consider what alternative detention arrangements are available for Mr X, including allowing him to live in the community.
11. The Minister's tabling statement of 14 May 2008 noted that the Minister *'will shortly be considering this case in a submission being finalised by the Department'*. The Ombudsman notes that Mr X has remained in a detention centre for five months following this statement.
12. In Report 410/08 the Ombudsman noted that Mr X has resided in Australia for over 13 years, has strong family connections in Australia and no significant ties in Vietnam. The Ombudsman also notes that Mr X has now remained in an immigration detention centre for over three years. The Ombudsman **recommends** that the Minister allow Mr X to live in a community detention arrangement while his immigration status is resolved.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date