

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 498/08

This is the fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first, second and third report (404/08). The Ombudsman's report was sent to the Minister on 4 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 appeal to the Full Federal Court (February 2008) was dismissed (April 2008); Mr X's case was considered in the Minister's Review of long term detainees (May 2008) with the decision made to proceed with removal; combined request under s 417/48B of the *Migration Act 1958* lodged (June 2008), the Department (DIAC) sought new information, request ongoing; Mr X's case again referred to the Minister as part of the current review of all people in detention (September 2008).

Current immigration status

2. Mr X remains an unlawful non-citizen detained at Sydney Immigration Residential Housing (IRH).

Removal details

3. DIAC advises that removal arrangements will progress, subject to the outcome of the request currently with the Minister and the Minister's current review.
4. DIAC further advises that a new travel document has been issued and a removal date has been set in early December 2008.

Ombudsman consideration

5. DIAC's further report to the Ombudsman under s 486N is dated 11 September 2008.
6. Ombudsman staff sighted the following documents: a medical report from Associate Professor A dated 15 August 2008; a medical summary report from International Health and Medical Services (IHMS) dated 18 August 2008; and a psychological summary report from Professional Support Services (PSS) dated 21 August 2008.

Key issues

Health and welfare

7. IHMS advises that Mr X continues to have scheduled consultations with the Neurosurgeon for the lesion on his skull. Assoc Prof A reports that Mr X had a follow up scan and this '*showed no change in the bony lump in his skull. He reports however that his headaches are worse at the moment and they are bothering him a lot. He is seriously thinking about having surgical intervention ... There is a risk that the surgery could cause damage to his brain and stroke-like symptoms. There is a risk of infection as he will need to have a cranioplasty afterwards with acrylic bone flap*'.

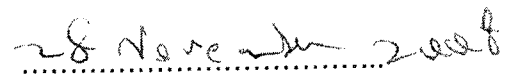
8. DIAC advises that Mr X met with the GP at Villawood Immigration Detention Centre on 31 October 2008 to discuss the option of a referral to another neurosurgeon to obtain a second opinion. Following this meeting Mr X has stated that he does not want to pursue a second opinion from another neurosurgeon and has decided not to have surgery. DIAC further advises that Mr X has commenced a new regime of medication to manage his pain.
9. The PSS report of August 2008 advises that *'Mr X's psychological presentation appears to have declined during the current reporting period ... given the extent of his prolonged detention period, it is likely that Mr X's psychological state may become increasingly challenging to manage without changes in situational factors'*.
10. DIAC advises that Mr X has not received a medical clearance to travel however Detention Health has advised that his medical condition is not a barrier to removal.

Ombudsman assessment/recommendation

11. Mr X has now spent three and a half years in detention. In Report 404/08 the Ombudsman noted that *'medical opinion suggests that given Mr X's long period in detention, he may further deteriorate both physically and mentally. In light of these considerations, the Ombudsman recommends that the Minister use his detention intervention powers under s 195A to allow Mr X to live in Community Detention while his immigration status is finally determined'*. The Minister's tabling statement of 14 May 2008 noted that *'As part of my review of long term detainees, I agreed to the Department continuing to make removal arrangements for this person'*.
12. The Ombudsman notes that Mr X was transferred to Sydney IRH in March 2008. However, despite the move to a quieter and less stressful environment as recommended by Mr X's neurosurgeon, the PSS report indicates that Mr X's anxiety symptoms have not decreased, and that his mental health may deteriorate further as his immigration detention at that facility continues. The Ombudsman notes that a travel document has recently been obtained for Mr X's removal in early December 2008. If Mr X's current removal is postponed, the Ombudsman again **recommends** that Mr X be placed in Community Detention while his immigration status is resolved.



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



.....
Date