

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 512/09*

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 second and third report. The Ombudsman's first report (238/07) was sent to the Minister on 15 October 2007 and tabled in Parliament on 13 February 2008. The Ombudsman's combined second and third report (417/08) was sent to the Minister on 28 April 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 included in the Minister's review of long term detainees (March 2008) with a decision made to progress removal (May 2008). The Department (DIAC) received a combined request under s 417/48B of the *Migration Act 1958* (June 2008), assessed as not meeting the guidelines for referral to the Minister. DIAC advises that the request will be finalised in coordination with Mr X's removal.
2. Mr X's case was referred to the Minister as part of the Minister's further review of long term detainees (September 2008). The Minister decided that Mr X's removal from Australia should proceed and that Mr X should remain in immigration detention until his removal can be effected (October 2008).

### *Current immigration status*

3. Mr X remains detained at Villawood Immigration Detention Centre.

### *Removal details*

4. DIAC reports that the current request for a travel document was lodged with the People's Republic of China (PRC) Consulate in January 2007. It further reports that it has '*pursued Mr X's travel document request on a number of occasions*' however the PRC Consulate advises that Mr X's application is '*still under investigation*'. A removal date has been set subject to the provision of a travel document.

## **Ombudsman consideration**

5. DIAC's further report to the Ombudsman under s 486N is dated 22 October 2008.
6. Ombudsman staff sighted the following documents: a psychology summary report from Professional Support Services (PSS) dated 7 August 2008 and a medical summary report from International Health and Medical Services (IHMS) dated 16 September 2008.

## **Key Issues**

### *Health and welfare*

7. The IHMS report states that Mr X is suffering from a blood condition that is '*chronic and currently stable*.' His condition is regularly monitored but IHMS notes '*if untreated, it is likely that his condition will prematurely end his life*.' IHMS concludes that '*it is likely that Mr X will need to access external specialist services on a regular basis*'.

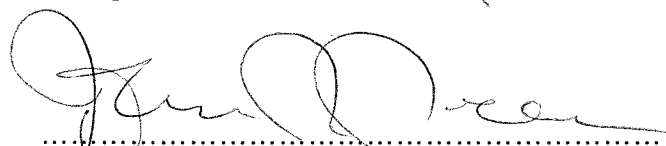
8. The PSS report states that Mr X has been referred to the NSW Service for Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) however he has declined STARTTS intervention.

*Other detention issues*

9. DIAC advises that Mr X has undergone monthly placement assessments since the previous report to the Ombudsman and has been identified as a 'low risk' detainee in regards to his behaviour but he is considered a 'high flight risk if given the opportunity'. The Ombudsman noted in Report 238/07 that '*Although Mr X did not leave Australia in 1999 when he was granted a BV [Bridging Visa] for that purpose, there is nothing to indicate that he is a risk to the Australian community nor is there any evidence that he is likely to abscond given his need for medical attention*'.

**Ombudsman assessment/recommendation**

10. Mr X has now been in immigration detention for over three and a half years. Report 238/07 noted that Mr X resided in Australia for over ten years and that '*the length of Mr X's detention together with his health are matters of increasing concern*'. The Ombudsman further noted that a contributing factor to Mr X's detention was the time taken by DIAC to decide requests for Ministerial Intervention.
11. In the Minister's recently announced Immigration Detention Values (July 2008) three groups will be subject to mandatory detention: an unauthorised arrival pending assessment and management of health, identity and security risks to the community; an unlawful non-citizen who presents unacceptable risk to the community; or an unlawful non-citizen who has repeatedly refused to comply with their visa conditions. The Ombudsman remains of the view that given Mr X's continuing need for specialist medical assistance there is no evidence that he is likely to abscond.
12. In Report 417/08 the Ombudsman noted concern regarding the length of time Mr X has remained in detention while waiting for a travel document from the PRC Consulate. DIAC advises that its request for a travel document for Mr X was lodged in January 2007 and it has followed up on this request. Almost two years since the application was lodged, the PRC Consulate advises that it is '*still under investigation*'. The Ombudsman notes that a revised tentative removal date has been set subject to the provision of a travel document. However, the Ombudsman further notes that this would be at least the eighth occasion on which this has occurred.
13. If the planned removal does not proceed on the tentative date, in light of Mr X's health, his '*low risk*' rating as established by DIAC, his time spent in immigration detention and the unlikelihood of his removal in the near future, the Ombudsman **recommends** that the Minister place Mr X in Community Detention or grant him a suitable visa while his immigration status is resolved.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman

19 February 2009  
Date