

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 523/09

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 (433/08). The Ombudsman's report was sent to the Minister on 9 May 2008 and tabled in Parliament on 4 June 2008. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. A submission under s 501 of the *Migration Act 1958* was sent to the Minister as part of his review of long term detainees. The Minister decided that the submission would be considered as part of the broader context of s 501 cases (May 2008). The Full Federal Court (FFC) dismissed Mr X's appeal (September 2008); Mr X lodged a Protection Visa (PV) and associated Bridging Visa (BV) application, BV deemed invalid (September 2008); filed an application to the High Court (HC) for special leave to appeal the FFC decision (September 2008); PV application refused, appealed to the Refugee Review Tribunal (RRT) (October 2008); RRT affirmed PV refusal (December 2008); submitted habeas corpus application to the Federal Court (FC) (January 2009), ongoing; special leave application to the HC, refused (February 2009).

Current immigration status

2. Mr X remains an unlawful non-citizen detained at Villawood Immigration Detention Centre (IDC).

Removal details

3. The Department (DIAC) advises that Mr X's removal was postponed following lodgement of his PV application and removal will be progressed subject to the Minister's consideration of the s 501 caseload and Mr X's ongoing litigation.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 9 October 2008.
5. Ombudsman staff spoke to Mr X by telephone on 3 December 2008.
6. Ombudsman staff sighted the following documents: a medical summary report by International Health and Medical Services (IHMS) dated 1 October 2008; a psychological summary report by Professional Support Services (PSS) dated 2 October 2008; and a complaint made by Mr X to the Ombudsman's office dated 6 November 2008.

Health and welfare

7. IHMS reports that Mr X was transferred to Liverpool Hospital in July 2008 after '*complaining of chest discomfort and slight numbness to the left side of his body*'. DIAC advises that he was discharged the following day. Mr X told Ombudsman staff at interview that when he was discharged from hospital he was not feeling better. He explained that his family has a history of heart problems and since July 2008 he has continued to sporadically experience numbness to the left side of his body. He said that often his left hand becomes numb and at least on four other occasions the whole left side

of his body has become numb. Mr X said that he does not complain or inform DIAC as *'they don't do anything'*.

8. PSS notes that although Mr X presents himself as being stable the *'level of resilience continues to decline as a result of prolonged detention of over 2 years, as reflected in his disgruntled attitude towards the detention environment'*. PSS reports Mr X to be losing motivation to socialise or engage in activities and concludes that *'Mr X's psychological condition is managed adequately in detention at present, however his decreased level of tolerance and resilience continues to pose as potential barriers for management in detention on long term basis'*.
9. Mr X said that being in detention is *'like someone pulling you down under water'*. He said that his general health is deteriorating as evidenced by his fluctuating weight. Mr X confirmed that he was taking anti-depressant medication but that this made him feel *'knocked out'*, and as he was close to hallucinating he stopped taking the medication.

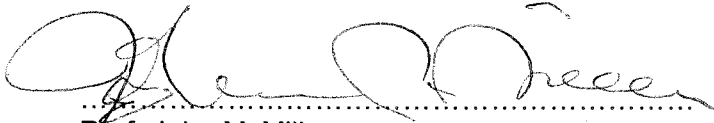
Other detention issues


10. Mr X said that he speaks to his son, now aged three, at least twice a month. He explained that he would like more contact with his son but his relationship with his son's mother and being detained makes it difficult.

Ombudsman assessment/recommendation

11. Mr X completed his criminal sentence and was released from gaol in October 2004. He then lived lawfully in the community for one year, formed a relationship with an Australian citizen and they had a child. His Spouse Visa was cancelled in October 2005 on the basis of his criminal record and he was detained. Mr X has spent more than three years in immigration detention, which is a greater period than the time he spent in gaol. He was not convicted of a violent crime and given his lawful status for the year preceding his detention, he does not appear to present a risk to the community. As noted in Report 433/08, Mr X's immigration detention has largely been the result of his litigation and refusal to return to the USA. At that time he was waiting for a decision from the FFC. Mr X advises that a habeas corpus application was lodged with the FC in January 2009 seeking his release from immigration detention.
12. Report 433/08 noted a 2007 IHMS report, which indicated that *'Mr X suffers from an adjustment disorder with anxious and depressed mood'*. Earlier PSS reports had expressed concern regarding Mr X's ongoing detention and the effect it may have on his mental health. The current PSS report notes that Mr X's mental health is deteriorating and will continue to deteriorate if he remains in a detention environment. The October 2008 IHMS report also indicates that his general health is declining.
13. In Report 433/08, it was noted that the Minister had announced that he would be reviewing long term detention cases and so no recommendation was made. The Minister has now completed two reviews of long term detainees and noted in the Tabling Statement of 3 June 2008 *'as part of my review of long term detainees, I determined that it was not in the public interest to intervene in this case. This person will remain in immigration detention pending the resolution of their ongoing litigation. If that litigation does not succeed, this person's removal will be pursued'*. The Ombudsman acknowledges that Mr X has an application before the FC. If DIAC determines that this is a barrier to Mr X's removal from Australia, serious consideration needs to be given to where Mr X is located while he awaits the outcome of his litigation. Given Mr X's health and the length of time he has spent in immigration detention, it may be appropriate to consider a community detention arrangement. Alternatively, Mr X may be available for removal from Australia.

14. The Ombudsman notes that if Mr X were to remain in detention, a further report under s 486N will fall due in April 2009. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon him and the suitability of continued detention in an immigration facility


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date