

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 529/09*

This is the fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's third report. The Ombudsman's combined first and second report (410/08) was sent to the Minister on 18 April 2008 and tabled in Parliament on 14 May 2008. The Ombudsman's third report (495/08) was sent to the Minister on 11 November 2008 and tabled in Parliament on 4 February 2009. This report updates the material in those reports and should be read in conjunction with them.

## **Principal facts**

### *Visa applications*

1. In June 2008 a combined submission under s 417/195A of the *Migration Act 1958* was referred to the Minister, returned pending broader consideration of the s 501 policy review (September 2008); a submission including s 417, 195A and 197B referred to the Minister (November 2008), ongoing.

### *Current immigration status*

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

### *Removal details*

3. DIAC advises that it does not have a current travel document for Mr X, and removal is not being considered until the outcome of the s 417/195A and s 197AB submissions are known.

## **Ombudsman consideration**

4. DIAC's further report to the Ombudsman under s 486N is dated 25 February 2009.
5. Ombudsman staff interviewed Mr X on 24 March 2009 at Maribyrnong IDC.
6. Ombudsman staff sighted a psychological summary report from Professional Support Services dated 3 February 2009 and a medical summary report from International Health and Medical Services (IHMS) dated 10 February 2009.

## **Key issues**

### *Health and welfare*

7. DIAC advises that Mr X '*has no significant physical or mental health issues*' and '*there have been no [management] incidents reported since the last ombudsman report*'.
8. The IHMS report states that a Mental State Examination was conducted on Mr X on 25 November 2008 and while no mental health issues were identified, '*He was noted to be stressed and angry at the time of the assessment*'. The PSS report notes that '*Mr X has been coping well in detention however further longevity in detention will increase [his] anger and level of anxiety*'.

9. At interview with Ombudsman staff Mr X stated that he *'cannot understand why a decision on the 501 cases is taking so long'*. He said that on *'good days'* he exercises, plays cards and sport, and *'on bad days I stay in my room and watch TV'*. He commented that he is being treated *'not well, but fair enough'* by GSL (Australia) Pty Ltd officers but *'Every day is the same—I feel very tired, I feel like a prisoner, it's like gaol—there's no freedom'*.

*Attitude to removal*

10. Mr X reiterated his fear of being returned to Vietnam. He said he has no family there and *'I would have to live on the streets'*.

**Ombudsman assessment/recommendation**

11. In April 2007, the Ombudsman recommended in Report 410/08 that the Minister *'consider what alternative detention arrangements are available for Mr X, including allowing him to live in the community while his immigration status is resolved'*. In November 2007, the Ombudsman recommended in Report 495/08 *'that the Minister allow Mr X to live in a community detention arrangement while his immigration status is resolved.'* However, Mr X remains in detention.
12. 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 Minister's tabling statement of 4 February 2009 noted that *'I am currently considering this person's case as part of a review of all cases in detention'*.
13. The Ombudsman notes that Mr X has served his custodial sentence for his crimes and there is no evidence the Ombudsman has seen that indicates that Mr X presents any risk to the community. In light of this and in line with the Minister's Immigration Detention Values, the Ombudsman again **recommends** that the Minister allow Mr X to live in a community detention arrangement while his immigration status is resolved.



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Dr Vivienne Thom  
Acting Commonwealth and Immigration Ombudsman

17 April 2009

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Date