

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

Under s 486O of the Migration Act 1958

Personal identifier: 530/09

This is the third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's second report. The Ombudsman's first report (432/08) was sent to the Minister on 1 May 2008 and tabled in Parliament on 4 June 2008. The Ombudsman's second report (487/08) was sent to the Minister on 14 October 2008 and tabled in Parliament on 25 November 2008. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Visa applications

1. A repeat request under s 417/48B of the *Migration Act 1958* was commenced (November 2008), assessed as not meeting the guidelines for referral to the Minister (December 2008), a further combined s 417/48B request was received (January 2009), assessed as not meeting the guidelines for referral to the Minister (February 2009). Mr X's case was also assessed against the s 197AB guidelines and not referred to the Minister (February 2009).

Current immigration status

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

Removal details

3. The Department (DIAC) advises that a tentative removal date has been set for May 2009. However it further advises that it is still liaising with the People's Republic of China (PRC) Consulate to obtain a current travel document.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 17 February 2009.
5. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 9 February 2009.

Key issues

Health and welfare

6. The IHMS report notes that a Mental State Examination was conducted on 12 December 2008 and '*no mental health issues were identified*'.

Ombudsman assessment/recommendation

7. The Ombudsman notes that Mr X has remained in immigration detention for over three years. Mr X has unsuccessfully sought judicial review regarding the refusal of his second Protection Visa application and lodged several unsuccessful Ministerial requests under s 417/48B. The Minister noted in his Statement to Parliament of 25 November 2008 that he agreed to DIAC continuing to make removal arrangements for Mr X. The only apparent barrier to Mr X's removal is a lack of a travel document as his previous document expired in July 2008. DIAC advised in the s 486N report of 3 September 2008 that it was liaising with the PRC Consulate to obtain a travel document and it is continuing to do so seven months later.

8. The Ombudsman made no recommendations in previous reports. In Report 432/08 it was noted that Mr X had an outstanding appeal at the Federal Magistrates Court and in Report 487/08 that Mr X's removal from Australia was imminent and only dependent upon DIAC obtaining a travel document. Mr X was in Australia for four years, five months lawfully, before he was detained as a visa over-stayer. There is no evidence to indicate that Mr X would be a risk to the Australian community. As there is no immediate resolution in sight of Mr X's immigration status, the Ombudsman **recommends** that the Minister consider placing Mr X into a community detention arrangement until he can be removed from Australia or until his immigration status is resolved.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

17 April 2009

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Date