

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 574/09

This is the eighth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's seventh report. The Ombudsman's combined first, second, third and fourth report (360/08) was sent to the Minister on 14 January 2008 and tabled in Parliament on 12 March 2008. The Ombudsman's fifth report (426/08) was sent to the Minister on 1 May 2008 and tabled in Parliament on 4 June 2008. The Ombudsman's sixth report (484/08) was sent to the Minister on 14 October 2008 and tabled in Parliament on 25 November 2008. The Ombudsman's seventh report (556/09) was sent to the Minister on 3 July 2009 and was tabled in Parliament on 16 September 2009. This report updates the material in those reports and should be read in conjunction with them.

Principal facts

Visa applications

1. Following an order by the Federal Magistrates Court, the Refugee Review Tribunal (RRT) has reheard (June 2009) Mr X's appeal against the Department's (DIAC) refusal to issue him a Protection Visa. The decision is pending.

Current immigration status

2. Mr X is an unlawful non-citizen in Community Detention (CD).

Removal details

3. The RRT decision is pending and Mr X is the subject of an Interim Measures Request from the United Nations Human Rights Committee. There has therefore been no recent action in regard to Mr X's removal.

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N of the *Migration Act 1958* is dated 24 August 2009.
5. Ombudsman staff interviewed Mr X by telephone using a Mandarin interpreter on 9 November 2009.
6. Ombudsman staff sighted a medical summary report by International Health and Medical Services (IHMS) dated 24 August 2009.

Key issues

Health and welfare

7. Mr X lived with a guardian following his release from Toowong Private Hospital. Since his last interview he has moved to live independently. He stated at interview that he was pleased with his new accommodation.

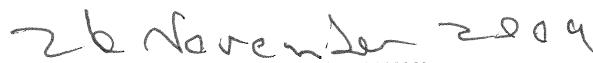
8. Mr X told Ombudsman staff, in relation to his mental health, that he remained concerned about his father who was in hospital being treated for lung cancer. He said that he continued to see a psychologist for counselling and continued taking medication. IHMS note in its report that Mr X is being treated with antidepressants. The IHMS report includes a comment from the Psychiatrist treating Mr X that *'whilst living in community detention he has felt more at ease at times, although he continues to experience chronic low grade depression and a sustained level of anxiety'*.
9. Mr X also stated, in relation to his physical health, that he continued to experience chronic pain from his shoulder. An MRI scan had resulted in recommendations for further treatment but he said that there had been some delay because of an issue over whether the treatment should be provided by a public or private hospital.
10. IHMS also notes that Mr X has received treatment for stomach and dental issues in the recent past.
11. Mr X stated that there had been no change to the conditions attaching to his community detention and that he remained unable to work or undertake formal study. When asked what activities he undertook to remain busy, Mr X said that he was *'bored, tired'* and thought his situation was not much different to being in a detention centre as far as this aspect was concerned.

Ombudsman assessment/recommendation

12. Mr X has been in immigration detention for a continuous period of five years and nine months, save for two days in May 2005, when he was temporarily released from detention as a consequence of the *Srey* case¹. There do not seem to have been any concerns about Mr X's character or behaviour while in Australia, during or before his detention.
13. Mr X has been in Community Detention for twelve months and has been living on his own for the last few months. The Ombudsman notes that community detention seems to have improved Mr X's psychological state. The Ombudsman also notes that Mr X is not permitted to work and that this situation may continue for some time.
14. If Mr X were to receive an unfavourable decision from the RRT, there would still be a number of issues that make it difficult to predict when his case may be finalised. In these circumstances his detention appears, for practical purposes, to be indefinite. The Ombudsman **recommends** that Mr X be considered for a suitable visa with work and study entitlements until there is a resolution to his case.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date

¹ *Chan Ta Srey v Minister for Immigration & Multicultural & Indigenous Affairs*, November 2003