

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 575/09*

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 (521/09) was sent to the Minister on 23 March 2009 and tabled in Parliament on 13 May 2009. The Ombudsman's second report (544/09) was sent to the Minister on 26 May 2009 and tabled in Parliament on 17 June 2009. This report updates the material in those reports and should be read in conjunction with them.

## **Principal facts**

### *Visa applications*

1. Mr X applied to the Federal Court (FC) seeking a declaration that he was unlawfully detained (July 2009), the FC remitted the matter to the Administrative Appeals Tribunal (AAT) for reconsideration (October 2009), ongoing.

### *Current immigration status*

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

### *Removal details*

3. The Department (DIAC) advises that until the matter at the AAT has been finalised, Mr X will not be available for removal. A hearing date has yet to be set. DIAC holds a travel document for Mr X which expired in November 2009.

## **Ombudsman consideration**

4. DIAC's further report to the Ombudsman under s 486N of the *Migration Act 1958* is dated 6 October 2009.
5. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 11 October 2009.

## **Key issues**

### *Health and welfare*

6. IHMS advises that Mr X voluntarily withdrew from the methadone program and was discharged in August 2009. Mr X remains on medication for insomnia and a diagnosed mental illness, and has been advised to commence a diabetic diet to control a persistently high blood sugar level.
7. DIAC advises that Mr X has not been involved in any management incidents for the past six months.

### *Other detention issues*

8. DIAC reports that Mr X has not previously been considered for Community Detention as IHMS had advised against it due to Mr X's dependence on methadone. In June 2009 IHMS advised that a client placed into the community who was dependent on the program may have greater access to illicit and prescription drugs, therefore their '*full withdrawal from methadone may take longer if such clients are placed in the community*'. Mr X was discharged from the program in August 2009.

### Ombudsman assessment/recommendation

9. Mr X has been in immigration detention for a little over three years. DIAC's preferred option is to remove Mr X but this outcome is unlikely in the short term as Mr X currently has a matter before the AAT and a further travel document will be required should the matter be decided in favour of the Minister.
10. As Mr X has not been involved in any management issues since the last s 486N report and has been discharged from the methadone program, the Ombudsman **recommends** that Mr X be considered for Community Detention while his immigration status is resolved.



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Prof. John McMillan  
Commonwealth and Immigration Ombudsman



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Date