

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

*Under s 486O of the Migration Act 1958*

**Personal identifier: 576/09**

This is the ninth s 486O report by the Ombudsman on Mr X as he has been detained in immigration detention since the Ombudsman's eighth report. The Ombudsman's first report (26/06) was sent to the Minister on 9 January 2006 and tabled in Parliament on 29 March 2006. The Ombudsman's combined second and third report (115/06) was sent to the Minister on 29 December 2006 and tabled in Parliament on 21 March 2007. The Ombudsman's combined fourth, fifth and sixth report (358/08) was sent to the Minister on 9 January 2008 and tabled in Parliament on 12 March 2008. The Ombudsman's seventh report (460/08) was sent to the Minister on 18 September 2008 and tabled in Parliament on 15 October 2008. The Ombudsman's eighth report (551/09) was sent to the Minister on 3 June 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. The Department (DIAC) advises that it initiated a combined s 417/197AB/195A submission under the *Migration Act 1958*. In July 2009 the Minister declined to exercise his power under s 417 or 195A and declined to intervene under s 197AB.
2. On 10 July 2009 Mr X lodged an application at the Federal Court seeking a declaration that he had been unlawfully detained and for an order of *habeas corpus* to release him from immigration detention. In September 2009 Mr X filed a notice of discontinuance.

### *Current immigration status*

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

### *Removal details*

4. DIAC reports that Mr X has no matters outstanding before the Minister, courts or tribunals and '*is requesting to be removed back to Vietnam*'. DIAC has applied for renewal of a Vietnamese *Laissez-Passer* travel document and has set a tentative removal date.

## **Ombudsman consideration**

5. DIAC's further report to the Ombudsman under s 486N is dated 21 September 2009.
6. Ombudsman staff spoke with Mr X by telephone on 3 December 2009 at Villawood IDC.
7. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 24 September 2009.

## Key issues

### *Criminal history*

8. DIAC advises that Mr X had appeared at the Magistrates Court in Port Adelaide in December 2008 to hear charges relating to failure to comply with conditions of bail and hindering police. The matter was due to be heard again in December 2009 but has been deferred.

### *Health and welfare*

9. The IHMS report states that *'Mr X has had few medical complaints but has had regular contact with IMHS staff for medications'*. In December 2009 Mr X told Ombudsman staff that he is not on any medication and has no health issues.

### *Attitude to removal*

10. Mr X stated that he does not want to return to Vietnam as he has *'no family, no friends, no connections'* there. However, he agreed to sign a removal document as he felt he had *'no choice'* and *'I'm sick of it [remaining in detention]'*.
11. Mr X expressed strong concerns about his prospects and lack of support in Vietnam. He said that he had asked his DIAC case manager if DIAC will *'help me get started'* in Vietnam, but had not yet been informed of what post-removal support may be available to him.

### *Other detention issues*

12. DIAC reports that Mr X was transferred from Stage Three at Villawood IDC to Stage One, at his request, in August 2009. Mr X told Ombudsman staff that he had requested the transfer as he did not want to be involved with a particular group of detainees in Stage Three and even though Stage One is *'no different'* to Stage Three, he is *'away from those people'*.

## Ombudsman assessment/recommendation

13. With the exception of a five month period in 2008 when Mr X was released as a person affected by *Sales*<sup>1</sup>, he has been detained in immigration detention since October 2003.
14. Mr X transferred to immigration detention from gaol in preparation for his removal to Vietnam. However, the six year period Mr X has spent in immigration centres is significantly longer than the non-parole period of 31 months he spent in gaol.
15. The Ombudsman notes that Mr X is awaiting a travel document to enable his return to Vietnam. The Ombudsman **recommends** that Mr X is fully informed at the earliest possible opportunity of available post-removal welfare and appropriate external agency support.

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
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Date

<sup>1</sup> *Sales v Minister for Immigration and Citizenship* [2008] FCAFC 132 (17 July 2008).