

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 590/10

This is the second s 486O report on Mr X as he has remained in immigration detention since the Ombudsman's first report (572/09) tabled in Parliament on 18 November 2009. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. The Department (DIAC) advises that Mr X's application for a Protection Visa was refused (November 2009); associated Bridging Visa application invalid due to Mr X's s 501 cancellation under the *Migration Act 1958*; sought review by the Refugee Review Tribunal (RRT), RRT affirmed DIAC's refusal (February 2010) but referred Mr X's case to DIAC for consideration under s 417 (ongoing); sought review by Federal Court (ongoing).

Current immigration status

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

Removal details

3. DIAC advises that Mr X *'is on a removal pathway pending finalisation of his review period regarding his protection visa refusal'*.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N is dated 22 January 2010.
5. Ombudsman staff spoke with Mr X by telephone on 13 April 2010.
6. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 30 December 2009.

Key issues

Health and welfare

7. The IHMS report states that Mr X *'remains on the drug maintenance program'* and continues to be treated for a number of physical complaints. A Mental State Examination was last conducted in September 2009 *'at which time periods of anxiety related to a previous stabbing incident and sleep disturbance were noted'*.
8. Mr X told Ombudsman staff in April 2010 that he believes Blaxland (Stage One) at Villawood IDC is *'over capacity'*, with internal tensions rising due to overcrowding in the communal areas. He felt that it was *'too risky to step outside my door'* following a recent stabbing incident between two detainees. He stated that this incident had triggered traumatic memories of his own stabbing by another detainee in 2008.

Placement issues and community links

9. DIAC reports that on 18 November 2009 Mr X was placed on a management plan to restrict his movements to Blaxland following his involvements in incidents *'on 18 November, 7 December and 31 December 2009, in which he deliberately caused damage to Detention Centre property and displayed aggressive behaviour towards Detention Service Provider (DSP) staff'*. DIAC advised that *'Should Mr X demonstrate a sustained period of good behaviour, it may be appropriate to recommend a transfer to Stage Three'*.
10. Mr X told Ombudsman staff that *'there have been incidents'* but there is *'a lot of pressure'* including noise and disruption caused by ongoing renovations in Blaxland. He said that detainees had tried to express their concerns at a recent meeting with Serco and DIAC staff but it was his perception that *'they got nowhere'*. Mr X also said he was not interested in moving to Fowler (Stage Three) because 50 detainees had recently been transferred there from Christmas Island. His wish is to be able to move to a community detention arrangement.
11. Mr X said that he is extremely concerned about his mother who has been managing a serious illness for the past two years and was recently diagnosed with breast cancer. She had mastectomy surgery in March 2010 and is undergoing chemotherapy treatment. Mr X has requested to live with his mother in a community detention arrangement in order to provide her with emotional support.
12. Following the recommendation by the Ombudsman in Report 572/09 Mr X was assessed against the guidelines for a Community Detention placement in January 2010. DAIC advises that the case did not meet referral guidelines *'based on his criminal history, recent behaviour in detention and his unwillingness to cooperate with the department'*. The assessment also stated that *'Given that Mr X has a visa cancelled under s 501 and a negative s 195A MI [Ministerial Intervention] he is assessed as posing a potential flight risk'*.
13. Mr X said that he had recently received notification that his request for Community Detention was refused but was not given any reasons for the refusal. He stated that, in support of his request, he had submitted three doctor's certificates about his mother's prognosis to DIAC staff. However, he was concerned that they may have been mislaid and were not considered at the time that he made his request.
14. Mr X confirmed that his partner lives in Grafton and because of her own family responsibilities and the cost of accommodation in Sydney it is difficult for her to visit him on a regular basis. However, he said that they have regular phone contact.

Attitude to removal

15. DIAC states that in December 2009 Mr X told his case manager that he may request removal with his partner subject to specified conditions. DIAC offered to provide Mr X with the maximum destitute allowance but he said that this was not satisfactory. DIAC also suggested that Mr X return to New Zealand and be joined by his partner at a later date. However, Mr X concluded that he would prefer to continue with his RRT review and possible s 417 Ministerial Intervention request.
16. Mr X told Ombudsman staff that he had seriously considered removal in 2009 but since his mother's recent medical diagnosis his priority is to be close to her.

Complaints to the Ombudsman

17. Mr X has lodged a number of complaints with the Ombudsman's office since he was detained in 2007. Part of Mr X's most recent complaint of February 2010 concerned alleged offensive comments by an IHMS psychiatrist which Mr X said caused him to 'lose the plot' and destroy a computer. He said that at the time of the consultation he was extremely upset about his mother's illness and his unresolved immigration status. The investigation found that it was inconclusive as to whether the IHMS doctor made inappropriate comments to Mr X and the complaint was finalised in March 2010.
18. Mr X commented that he has been allowed to visit his mother weekly for the past six weeks and there have been 'no incidents or problems'.

Ombudsman assessment/recommendation

19. In Report 572/09 the Ombudsman recommended that Mr X be considered for Community Detention since 'it is not now likely that Mr X will be removed in the near future.' The Minister, in his Statement to Parliament of November 2009, stated that Mr X's 'detention placement is subject to regular review, and changes to this person's placement will be considered as appropriate'.
20. Since the Minister's Statement to Parliament Mr X has received news of his mother's cancer diagnosis. He has now been in immigration detention for over two and a half years. The length of his detention is inconsistent with the Immigration Detention Values. Mr X has applied to the Federal Court for a review of the decision not to grant him a Protection Visa and is awaiting a Ministerial Intervention decision.
21. The Ombudsman again **recommends** that Mr X be considered for Community Detention with appropriate reporting arrangements so that he may be able to be close to his mother during her cancer treatment.



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Ron Brent
Acting Commonwealth and Immigration Ombudsman

23 April 2010

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Date