

# RESPONSE TO OMBUDSMAN'S REPORT MADE UNDER SECTION 486O OF THE MIGRATION ACT 1958

## STATEMENT TO PARLIAMENT

### General Comments

I refer to the Commonwealth Ombudsman's report tabled in Parliament today. I note that this report covers 20 assessments relating to 19 people.

Of these 19 people, only five remained in immigration detention at the time the Ombudsman wrote his assessments. Of these five:

- one remains in immigration detention and is awaiting removal
- two have been granted Protection Visas and released from detention
- one has left Australia voluntarily, and
- one has been removed from Australia.

In addition to this report I table individual statements on a number of assessments previously tabled.

### *Update on long term detainee review*

On 12 March 2008, I announced that I would review, in consultation with the Commonwealth Ombudsman, the cases of people who have been in immigration detention for more than two years.

On 23 May 2008, I announced the outcome of my review, after assessing the cases of 72 people held in immigration detention for longer than two years – 61 of whom had been detained for more than two years when I announced the review in March and a further 11 who required reports to the Commonwealth Ombudsman by the end of April 2008.

Underpinning my decisions in all of these cases were the principles that indefinite detention is not acceptable to this Government, and that those people who have no right to be in Australia are to be removed promptly.

My review of the 72 cases resulted in:

- 31 people being granted visas or considered for visa grants pending Public Interest Criteria (PIC) checks including health and security checks
- 24 people being placed on removal pathways, and
- another 17 people were subject to ongoing proceedings which meant that their status cannot be resolved at this time.

My Department has been working hard to implement these decisions. Of the 72 cases reviewed:

- the number of people subject to ongoing proceedings impeding the resolution of their status has been reduced to 7 cases, with 4 people released as *Sales affected\**

- of the 37 people now on visa pathways, 29 have already been granted permanent or temporary visas, while 8 are progressing with their PIC checks. All of these 8 have been moved to lower security accommodation or have been granted Bridging visas pending the completion of their PIC checks, and
- of the 24 on a removal pathway, 12 have already been removed.

*Review of current detention caseload*

I have asked my Department to review all current detainees and apply the same principles used during my long term detainee review to this caseload. I expect that this review will be completed by mid October 2008.

Statement 437/08

This person was removed from Australia on 18 July 2008.

Statement 438/08

These persons were part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I agreed to consider granting these persons permanent visas and agreed to these people being placed in community detention

These persons were placed in community detention on 20 June 2008. They were granted Permanent Protection visas on 14 August 2008.

Statement 439/08

This person was granted a Removal Pending Bridging visa on 14 July 2005 and is lawfully in the community.

Statement 440/08

This person left Australia voluntarily on 15 July 2008.

Statement 441/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I indicated that this person's Protection visa process should continue.

This person was granted a Temporary Protection visa on 5 June 2008. This person was granted a Resolution of Status visa on 2 September 2008.

Statement 442/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I indicated that this person's Protection visa process should continue.

This person was granted a Permanent Protection visa on 6 May 2008.

Statement 443/08

This person was granted a Global Special Humanitarian visa on 10 January 2008.

Statement 444/08

This person was granted a Temporary Protection visa on 10 January 2008.

Statement 445/08

This person was part of my review of long term detainees announced on 12 March 2008.

However, prior to the review I had already decided to consider granting this person a visa.

This person was granted a five year Resident Return visa on 17 April 2008.

Statement 446/08

This person was granted a Temporary Protection Visa on 23 June 2008.

Statement 447/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I decided to consider granting this person a permanent visa.

This person was granted a Global Special Humanitarian visa on 17 April 2008.

Statement 448/08

This person was part of my review of long term detainees announced on 12 March 2008.

However, prior to the review I had already decided to consider granting this person a visa.

This person was granted a Global Special Humanitarian visa on 17 April 2008.

Statement 449/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I agreed to the Department continuing to make removal arrangements for this person.

This person was removed from Australia on 23 May 2008.

Statement 450/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I agreed that this person's removal should proceed.

Statement 451/08

This person was granted a Removal Pending Bridging visa on 6 December 2006 and is lawfully in the community.

Statement 452/08

This person was granted a Bridging visa on 6 March 2007. This person is currently undergoing Public Interest Criteria (PIC) checking for the grant of a Global Special Humanitarian visa.

Statement 453/08

This person was granted a Spouse visa on 5 March 2008.

Statement 454/08

This person was part of my review of long term detainees announced on 12 March 2008.

As part of my review of long term detainees, I agreed to the Department continuing to make removal arrangements for this person.

This person was removed from Australia on 30 May 2008.



CHRIS EVANS  
Leader of the Government in the Senate  
Minister for Immigration and Citizenship  
Dated: 23/9/8

\* Sales decision: The Full Federal Court in *Sales v Minister for Immigration and Citizenship* [2008] FCAFC 132 on 17 July 2008 affirmed the obiter reasoning in *Moore v Minister for Immigration and Citizenship* [2007] FCA 626 and found that a Transitional (Permanent) visa

cannot be cancelled on character grounds (s 501 of the Migration Act 1958) because it is a visa that is "held" rather than "granted". As a result of the judgment some 23 people were released from immigration detention.

Recent amendments to the Migration Act, effective 19 September 2008, operate to re-enliven the original decisions to cancel in 15 of these 23 cases. These people have again become unlawful non-citizens and are liable for detention and removal from Australia. The Department is reconsidering the remaining 8 people for cancellation under s.501.