

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 350/08*

This is the combined fifth and sixth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined second, third and fourth report (135/07). The Ombudsman's first report was sent to the Minister on 25 November 2005 and tabled in Parliament on 7 February 2006. The Ombudsman's combined second, third and fourth report was sent to the Minister on 26 March 2007 and tabled in Parliament on 9 May 2007. This report updates the material in those reports and should be read in conjunction with them.

## **Principal facts**

### *Visa applications*

1. The Refugee Review Tribunal (RRT) affirmed the Department's (DIAC) decision to refuse a Protection Visa (PV) (May 2007); application for judicial review at the Federal Magistrates Court (June 2007) unsuccessful; appeal to the Full Federal Court (October 2007) ongoing.

### *Current immigration status*

2. Mr X was transferred from Baxter Immigration Detention Centre (IDC) to Maribyrnong IDC in August 2007.

### *Removal details*

3. DIAC advises that the deportation of Mr X is dependant upon the outcome of his current litigation.

## **Ombudsman consideration**

4. DIAC's further reports to the Ombudsman under s 486N are dated 30 May 2007 and 29 November 2007.
5. Ombudsman staff interviewed Mr X at Maribyrnong IDC on 7 January 2008 and also spoke to his wife Ms Y and supporter Ms Z.
6. Ombudsman staff sighted a number of documents: International Health and Medical Services (IHMS) medical summary reports dated 19 March 2007 and 4 June 2007; correspondence from Ms Z dated 25 April 2007; correspondence from Mr X dated 13 June 2007; and the Minister's Statement to Parliament dated 4 May 2007 in response to Report 135/07.

## **Key issues**

### *Health and welfare*

7. DIAC indicates that Mr X continues to consult with IHMS on a regular basis and has attended offsite medical and physiotherapy appointments. IHMS reports that Mr X is receiving medication for back pain stemming from disc degeneration in the lumbar spine.

### *Attitude to removal*

8. Mr X claims that he fears for his life from the actions of vigilantes should he be removed to the United Kingdom. In May 2007, the RRT found that while it accepted Mr X may 'face serious harm from various individuals and groups because of his membership of a particular social group ... an adequate level of state protection would be available'. The RRT concluded that Mr X did not satisfy the criterion for a protection visa.

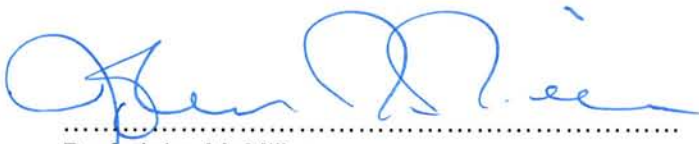
### *Other detention issues*

9. Mr X and his wife have expressed their preference for him to have been transferred to Perth IDC rather than Maribyrnong IDC when Baxter IDC closed so that he is closer to his wife in

Western Australia. DIAC advises that, due to space constraints and the renovations being undertaken at Perth IDC, a transfer is not possible.

### **Ombudsman assessment/recommendation**

10. The Minister signed a deportation order under s 200 in October 1999 in respect of Mr X and he has been in an immigration detention centre for six years since he completed serving his criminal sentence in 2001. If there was no deportation order issued, he would have been entitled to be released into the community at the completion of his criminal sentence. Mr X was detained in preparation for his deportation from Australia. That has not yet occurred. The litigation commenced by Mr X and his application for a protection visa are a major factor in his continuing detention, though in that regard he is in no different position to many other non-citizens who have instituted proceedings to avoid being removed from the country. People in that situation commonly remain in the community on bridging visas while the proceedings are resolved. It is important, in Mr X's case, to note that he was a lawful Australian resident for 17 years prior to the issue of the deportation order in 1999.
11. The main concern must now be the length of time that Mr X has spent in detention and the reality that his detention is indefinite. The Ombudsman's first report on Mr X in November 2005 (Report 10/05) recommended that serious consideration be given to his release if he could not be deported quickly. Report 135/07 in March 2007 recommended that Mr X be granted an appropriate visa, with appropriate safeguards, so he may be released from detention while his immigration status was resolved. The Minister responded in May 2007 by stating to Parliament that 'this client has ongoing litigation which prevents their removal. My Department is continuing to monitor this client's case'.
12. It has now been two years since the Ombudsman first reported on Mr X's case and still there is no immediate solution in sight for his immigration status, nor is there any indication of his release from immigration detention. The Ombudsman understands that in response to Recommendation 6.3 of the *Report into referred immigration cases: Other legal issues*<sup>1</sup> DIAC is undertaking a review of all cases in which a person, who is no longer serving a criminal sentence, is the subject of a deportation order that remains unexecuted. The Ombudsman recommended in that report that the review should consider whether people in immigration detention should be released from detention under s 253(9).
13. The Ombudsman **recommends** that Mr X be released from immigration detention under s 253(9). If that recommendation is not accepted, the Ombudsman requests that the Minister's tabling statement explain why Mr X was not released, why alternatives to detention have not been accepted and whether there is a reasonable prospect that Mr X's immigration status can soon be resolved.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date

<sup>1</sup> 'Department of Immigration and Citizenship, report into referred immigration cases: other legal issues', June 2007, Report by the Commonwealth and Immigration Ombudsman, Prof. John McMillan, Report No. 10/2007, Commonwealth Ombudsman Canberra.