

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 337/07

Case overview

1. Mr X is aged 31 and is a citizen of Iran.
2. Mr X arrived in Australia in June 2000 and was detained under s 189(2) of the *Migration Act 1958* at Curtin Immigration Reception and Processing Centre (IRPC), later Woomera IRPC then Baxter Immigration Detention Centre (IDC). Mr X was transferred to Glenside Hospital on 31 March 2005 where he remained until released from detention.
3. The Department's (DIAC) refusal of Mr X's Protection Visa (PV) application (April 2001) was affirmed by the Refugee Review Tribunal (June 2001). He unsuccessfully sought judicial review at the Federal Court (FC), Full Federal Court and High Court. A s 48B request resulted in the Minister allowing Mr X to lodge another PV application. On 20 July 2005 Mr X was granted a Temporary Protection Visa (TPV).

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 7 August 2005.
5. Ombudsman staff spoke with Mr X by telephone on 31 October 2005.
6. Ombudsman staff sighted progress notes by International Health and Medical Services dated 12 February 2005 and 29 March 2005, and a copy of DIAC's s 417/48B submission dated 2 June 2005.


Key issues

Health and welfare

7. DIAC advises that on 1 February 2005 Mr X filed an application in the FC seeking, amongst other things, his removal from Baxter IDC to a hospital facility and a direction that he receive urgent medical assessment and treatment by a suitably qualified psychiatrist. Mr X was admitted to Glenside Hospital in March 2005, which rendered the injunctive relief unnecessary and the application was dismissed. The Federal Court¹ concluded that it was the Commonwealth's duty to ensure a reasonable level of care was taken but *'given the known prevalence of mental illness amongst the over 100 long-term detainees at Baxter ... the level of psychiatric service made available to S and M was, and remained, clearly inadequate. Where there was an obvious need to take steps to provide timely psychiatric service after the protest, none were taken'*.
8. DIAC noted in the submission to the Minister of 2 June 2005 that Mr X was diagnosed at Glenside Hospital with Post-Traumatic Stress Disorder and suffered a Major Depressive Episode with psychotic features.

Ombudsman assessment/recommendation

9. The Ombudsman notes that Mr X is now the holder of a TPV and makes no recommendations in this report.


Prof. John McMillan
Commonwealth and Immigration Ombudsman


Date

¹ *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* [2005] FCA 549 (5 May 2005)