

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 255/07*

## **Case overview**

1. Mr X is aged 23 and is a citizen of Afghanistan. He is a Shi'a Muslim of Hazara ethnicity and he claims his family moved to Pakistan.
2. Mr X arrived in Australia by boat as an unaccompanied minor in August 2001. He was detained under s 189(2) of the *Migration Act 1958* and was placed at Woomera Immigration Reception and Processing Centre. At a later date he was transferred to Port Hedland IRPC and Baxter Immigration Detention Centre.
3. The Department's (DIAC) decision to refuse Mr X's application for a Protection Visa in February 2002 was affirmed by the Refugee Review Tribunal in August 2002. A request under s 417 resulted in the Minister granting Mr X a Global Special Humanitarian Visa (GSHV) in October 2005 and releasing him from detention.

## **Ombudsman consideration**

4. DIAC's report to the Ombudsman under s 486N is dated 10 August 2005.
5. Ombudsman staff interviewed Mr X at Glenside Hospital on August 2005 and by telephone on February 2007.
6. Ombudsman staff sighted a psychological report by Mr Y dated 17 May 2005 and a psychiatric report by Dr Y dated 30 June 2005.

## **Key issues**

### *Health and welfare*

7. In May 2005 Mr Y observed that Mr X had a mental illness as defined by s 20BQ of the *Crime Act 1914* and that his *'mental health problems have been exacerbated by the unique psychosocial stressors associated with indeterminate immigration detention'*. He further noted that *'It is possible that he may engage in aberrant behaviour in response to his powerlessness and frustration with detention. I have also formed the opinion that Mr X has received inadequate mental health care while in detention'*. In June 2005 Dr Y concluded that Mr X has *'severe Major Depressive Disorder ... underlying PTSD'*.
8. DIAC advises that in July 2005 Mr X was transferred to Glenside Hospital where he spent four months, including after being granted a visa in October 2005.
9. Mr X said that detention had a *'big impact'* on him and that he experienced significant health issues while in detention, equating his situation to *'life under Nazi rule – day of judgement'* and commenting that *'during those four years it was like in a room which was a cabbage and all of our life was in a cabbage, most of the time we were getting sick'*. Mr X said that he had difficulty getting medical treatment at Baxter IDC, stating that he had to line up for one to two hours to receive medication. On the few occasions he was able to see a doctor, he was not provided with an explanation of what was wrong with him.
10. Dr Y noted that if Mr X was released *'that with adequate appropriate support he would adapt to life in the general community and become a productive member'*. Mr X claims that when he was discharged from Glenside Hospital into the community, DIAC provided

him with a television and stereo, and visited him fortnightly for several months. He claims that he was not provided with any further post-release mental health support.

11. Mr X said that while he was initially happy after being given a permanent visa, he began to feel depressed again and sought treatment from a psychologist in mid-2006, who encouraged him to voluntarily admit himself to the psychiatric ward at St Vincent's Hospital in Melbourne in November 2006. He said that he spent one month in hospital and after his release he continued to see a psychologist and take medication for depression.

#### **Ombudsman assessment/recommendation**

12. While the Ombudsman notes that Mr X has been granted a GSHV, it is clear that his mental health is still of concern. After his release he continued to be treated for depression and was re-hospitalised to treat this condition. The available medical evidence notes that his mental health significantly deteriorated due to his length of time in detention, the uncertainty he experienced about the future and his fear of persecution if returned to Afghanistan. In light of this, DIAC may wish to consider what role it needs to play in relation to the provision of ongoing care and assistance to Mr X.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date