

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 365/08

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. The Ombudsman's first report (33/06) was sent to the Minister on 17 January 2006 and tabled in Parliament on 29 March 2006. The Ombudsman's combined second, third and fourth report (133/07) was sent to the Minister on 20 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 Department (DIAC) initiated a request under s 195A of the *Migration Act 1958* to the Minister for the possible consideration of his detention intervention powers (March 2007), submission referred to the Minister who declined to intervene (July 2007); DIAC initiated a request under s 195A (November 2007) and a submission was being prepared for the Ministers consideration (December 2007).

Current immigration status

2. Mr X remains an unlawful non-citizen detained at Villawood Immigration Detention Centre (IDC) since March 2002.

Removal details

3. DIAC advises that in January 2007 the International Organisation for Migration provided Mr X with information, support and migration counselling to discuss returning to India but Mr X withdrew from the process the same day.
4. DIAC advises that in November 2007, the new High Commissioner of India indicated that India could issue travel documents without the applicant's signature on confirmation of identity and Indian nationality. Mr X's identity was established on 23 August 2007.

Ombudsman consideration

5. DIAC's further reports to the Ombudsman under s 486N are dated 30 May 2007 and 26 November 2007, and the Minister's Statement to Parliament in relation to Report 133/07 is dated 4 May 2007.
6. Mr X was interviewed by Ombudsman staff by telephone on 16 August 2007.
7. Ombudsman staff sighted the following documents: a Professional Support Services (PSS) psychological summary report dated 17 May 2007 and International Health and Medical Services (IHMS) reports dated 4 June 2007 and November 2007.

Key issues

Health and welfare

8. The IHMS report noted that Mr X '*has a history of Delusional Disorder*'. Mr X's last Mental State Examination was conducted in March 2007. The IHMS report stated that '*No thoughts of self harm or harm to others evident. Mr X remains on medications*'. IHMS reported that there is nothing to indicate that Mr X's medical conditions could be better managed in a setting other than an IDC.
9. PSS reported that Mr X was offered counselling on two occasions in December 2006 and January 2007 but declined on both occasions. At interview with Ombudsman staff Mr X explained that he had refused counselling because he did not trust PSS staff but that he is now willing to accept counselling.

10. The IHMS report of June 2007 noted that Mr X was consulted by the GP for a follow-up of chronic knee, neck and back pains. Further examinations have identified *'mild degenerative changes in his neck and some bulging of his vertebral discs with no accompanying nerve compression in his lower back'*. Management of these problems has included anti-inflammatory medication, analgesia and physiotherapy.
11. A fellow detainee assaulted Mr X in detention in July 2007. DIAC advises that Mr X suffered a broken left hand that required a plate and screws and physiotherapy. At interview, Mr X said he believes that his hand injury has left him disabled for life.

Attitude to removal

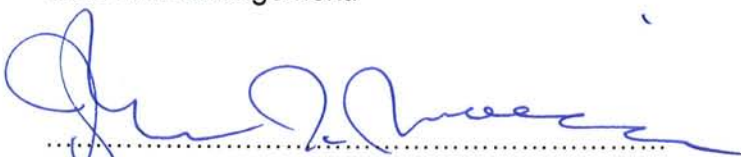
12. The IHMS report of November 2007 reported that *'Mr X remains angry about his detention situation and refuses to return to India'*.

Other detention issues

13. DIAC advises that Mr X *'continues to exhibit behavioural concerns and is being managed under a behaviour management plan.'* Due to Mr X's difficult behaviour and the risk he presents to himself and other detainees, he was offered three placement options in July 2007 and Mr X decided to move from Stage One to Stage Three where his movements are restricted and a guard is assigned to him at all times.

Ombudsman assessment/recommendation

14. Mr X has been in detention since March 2002. Report 33/06 referred to the length and indefinite nature of Mr X's detention, noting that *'it is not clear at this time when a travel document will be obtained by DIMIA, and therefore there is no certainty in Mr X's potential removal date'*. Report 133/06 recommended that if further delays were experienced in obtaining travel documents from the Indian High Commission *'an alternative to immigration detention now needs to be considered.'* That recommendation was not accepted and now Mr X has been detained for almost six years.
15. DIAC advises that it continues to experience difficulty in acquiring travel documents for Mr X though there is some indication from the new High Commissioner of India that travel documents can be issued to persons once their identity and nationality have been confirmed. DIAC advises that the views of the new Minister have not yet been sought on the future management of individual clients of Indian nationality who do not cooperate in completing travel documents.
16. The pressing concern is to bring to an end Mr X's long period of immigration detention. This may happen by his removal to India if travel documents are issued by the High Commission of India, notwithstanding Mr X's lack of cooperation. If this does not occur, or there is a delay in either a new policy being implemented by the High Commission or the views of the Minister for Immigration and Citizenship being obtained, the likely prospect is that Mr X would remain in immigration detention for an indefinite period. As noted in Report 133/06, and consistent with published immigration detention principles, it is undesirable that persons remain indefinitely in immigration detention when it has proven difficult to remove them to another country. If Mr X is not removed from Australia by the statutory period prescribed in s 486P for the tabling of this report in Parliament (*viz.* within 15 sitting days of receiving this report), the Ombudsman **recommends** that the Minister exercise his powers under s 195A to grant Mr X a suitable visa with work rights, subject to appropriate health and security checks, or otherwise implement an alternative detention arrangement.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

25 January 2008
Date