

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 361/08*

**This is the combined third and fourth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first and second report (143/07). The Ombudsman's report was sent to the Minister on 23 April 2007 and tabled in Parliament on 13 June 2007. This report updates the material in that report and should be read in conjunction with it.**

## **Principal facts**

### *Visa applications*

1. The Department (DIAC) began considering Mr X's case under s 417/48B/195A of the *Migration Act 1958* (February 2007); DIAC initiated two s 197AB assessments of Mr X's circumstances to determine if he was eligible to be considered for placement in Community Detention, both requests were assessed as not meeting the guidelines for referral to the Minister (March and May 2007); a DIAC initiated combined s 417/48B/195A submission was referred to the Minister (June 2007), the Minister exercised his discretion under s 48B to allow Mr X to lodge a fresh Protection Visa (PV) application (November 2007).

### *Current immigration status*

2. Mr X was placed in Alternative Detention (AD) in the community in Adelaide (January 2007); he was returned to Port Augusta Immigration Residential Housing (IRH) (March 2007); the Port Augusta IRH was closed and Mr X was transferred to Maribyrnong Immigration Detention Centre (IDC) (August 2007). Mr X was admitted to Toowong Private Hospital (November 2007) then discharged and transferred to Villawood Residential Housing (December 2007).

### *Removal details*

3. DIAC advises that it is not currently pursuing a travel document for Mr X's removal.

## **Ombudsman consideration**

4. DIAC's further reports to the Ombudsman under s 486N are dated 20 June 2007 and 4 December 2007, and the Minister's Statement to Parliament is dated 12 June 2007.
5. Ombudsman staff interviewed Mr X by telephone on 17 August 2007.
6. Ombudsman staff sighted the following documents: medical summary report from the International Health and Medical Services (IHMS) dated July and 17 August 2007; psychiatric reports by Dr A dated 17 June 2007 and Assoc Prof B dated 18 June 2007; and psychological summary reports from Professional Support Services (PSS) dated 13 June 2007 and 27 June 2007.

## **Key issues**

### *Health and welfare*

7. Report 143/07 noted that Mr X had been diagnosed with Major Depression.
8. Mr X was placed in Alternative Detention (AD) in the community in Adelaide in January 2007 so that he could access external psychological support. In March 2007, Mr X was returned to Port Augusta IRH. The June 2007 PSS report noted 'It

*is understood that Mr X developed a good social support network and activity schedule during alternate detention in Adelaide. Moving back to Port Augusta could have exacerbated depression symptoms as a reaction to loss of this network/lifestyle'. At interview with Ombudsman staff, Mr X said he had benefited from living in the AD arrangement and had wanted to remain there.*

9. In May and June 2007, the Public Advocate of South Australia made two unsuccessful applications to the Guardianship Board for a Guardianship order. In the second case, there was differing psychiatric evidence on whether Mr X was capable of looking after his own interests.
10. The medical evidence draws an association between Mr X's mental condition and his immigration detention. Dr A states that his condition had worsened due to *'his increasing frustration and despair about the length of his continued detention and the perceived lack of progress in resolving his visa status'*. Assoc Prof B states his illness is *'subsequent to and almost certainly secondary to his experiences in the Australian immigration detention and court process'*. The August 2007 PSS report noted that *'His close proximity to GSL [Global Solutions Limited] officers and DIAC staff further significantly exacerbates his depression, triggering a sense of hopelessness ... he is likely to present with progressively deteriorated mental health'*. IHMS stated that *'his depression has remained largely unchanged; his risk of self harm is felt to be less. His depression is related to his being in detention and the uncertainty of his situation'*.
11. PSS report that Mr X had been treated with depression management techniques, anxiety and anger management skills, supportive counselling and antidepressant medication. However, by June 2007, PSS noted that Mr X had become ambivalent about counselling, his psychological presentation had deteriorated and he was *'likely to encounter crisis in the near future'*. Mr X told Ombudsman staff that he does not trust DIAC's psychologists and psychiatrists. He further said he is often short-tempered and doesn't think that he has *'feelings anymore'*. He has difficulty sleeping and takes sleeping medication, however he commented that the sleeping tablets do not work.
12. IHMS report that Mr X has ongoing knee problems and an orthopaedic surgeon has noted a rupture of a previously repaired anterior cruciate ligament and a tear in his knee cartilage. Treatment with physiotherapy has been recommended.

#### *Detention arrangements*

13. In August 2007, the Port Augusta IRH facility was closed and Mr X was transferred to Maribyrnong IDC. Mr X told Ombudsman staff he did not want to be moved because he would be a long way from his support people and friends in South Australia.

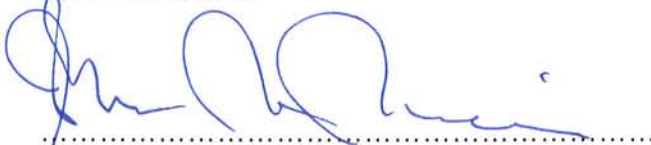
#### *Other issues*

14. DIAC advises that in August 2007, Mr X's third criminal charge of damage to Commonwealth property was dismissed by the court due to his mental health issues.

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

15. Report 143/07 of April 2007 noted that Mr X was suffering from Major Depression and recommended that the Minister make a decision on Mr X's s 417/195A submissions as soon as possible. DIAC's submission under s 417/48B/195A was sent to the Minister in June 2007. In November 2007, the Minister intervened under s 48B and allowed Mr X to lodge a further application for a PV. The application is ongoing.

16. Report 143/07 also recommended that the Minister consider alternatives to detention in a residential housing arrangement for Mr X, including granting him a suitable visa with work rights, subject to appropriate reporting and surety checks, while his immigration status was being resolved. Mr X remains in detention and has been since July 2004
17. The two changes that have occurred since the Ombudsman's last report strengthen the case for Mr X to be released from detention. The first being that he has been granted the opportunity by the Minister to lodge a fresh application for a PV, though it may take some time for that application to be resolved. The second is that Mr X was disadvantaged by the closure of the Port Augusta IRH and his transferral to Maribyrnong IDC resulted in him being admitted to a psychiatric hospital.
18. The Ombudsman **recommends** that Mr X be granted a suitable visa with work rights while his immigration status is resolved, though his medical conditions may require him to receive income support. If Mr X is released into the community, DIAC will also need to consider how it can assist him with psychiatric and other medical support.



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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

17 July 2008  
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Date