

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 344/07*

## Case overview

1. Mr X is aged 39 years and is a citizen of Sri Lanka. His wife, daughter and remaining family live in Sri Lanka.
2. Mr X arrived by boat code-named the *Dulcot* at the Cocos (Keeling) Islands on 15 September 2001. He was detained under s 189(3) of the *Migration Act 1958* at the Cocos Islands Immigration Reception and Processing Centre (IRPC). In July 2002 he was transferred to Perth Immigration Detention Centre (IDC) and then to Port Hedland IRPC and Baxter IDC. On 28 July 2005 Mr X was granted a Removal Pending Bridging Visa and released from detention.
3. Mr X unsuccessfully applied for a Refugee and Humanitarian Visa in January 2002. The Department's (DIAC) decision in November 2002 to refuse Mr X's application for a permanent Protection Visa (PV) was affirmed by the Refugee Review Tribunal in January 2003. He unsuccessfully sought judicial review at the Federal Magistrates Court, Full Federal Court and High Court. A request under s 48B resulted in the Minister allowing Mr X to lodge another PV application, and on 14 May 2007 he was granted a Temporary Protection Visa (TPV).

## Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 11 November 2005.
5. Ombudsman staff interviewed Mr X on 17 June 2006.
6. Ombudsman staff sighted DIAC's response to the Human Rights and Equal Opportunity Commission (HREOC) dated 12 May 2003.

## Key issues

### *Issues relating to the Excision of the Cocos (Keeling) Islands*

7. Mr X arrived two days before the excision of the Cocos Islands from the Australian migration zone, which took effect from midday 17 September 2001. DIAC advised that at the time, it thought that all those aboard the *Dulcot* who were seeking asylum were 'offshore entry persons' and not eligible to apply for a PV. It later became clear to DIAC that this was wrong. Details of a similar case are discussed in Report 201/07.

### *Detention issues*

8. The Cocos Islands IRPC, a former animal quarantine station, was reported by HREOC to be 'completely inappropriate for anything but initial health checks'<sup>1</sup>.

### *Attitude to removal*

9. Mr X stated that he does not want to return to Sri Lanka as he fears for his life.

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<sup>1</sup> 'A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001', 2002, Human Rights & Equal Opportunity Commission.

### **Ombudsman assessment/recommendation**

10. When Mr X first arrived in Australia, DIAC appears to have made an administrative error in classifying him as an offshore entry person from an excised zone. As a result, Mr X was prevented from making a PV application until one year after his arrival and detained at Cocos Islands IRPC for five months in conditions described by HREOC as inappropriate for ongoing detention.
11. In light of these considerations the Minister might consider exercising his discretion to waive the usual 30 month waiting period and allow Mr X to be considered for a PV.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date