

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 363/08*

## **Case overview**

1. Mr X is aged 30 and is a citizen of Tanzania.
2. In August 2004 Mr X arrived in Australia as a stowaway and the Department (DIAC) detained him under s 189(1) of the *Migration Act 1958*. He was detained at the Gladstone Police Watch House, Arthur Gorrie Correctional Centre, Baxter Immigration Detention Centre (IDC), Perth IDC and several hospitals, including Glenside Hospital.
3. DIAC's decision in September 2004 to refuse Mr X's application for a Protection Visa (PV) was affirmed by the Refugee Review Tribunal (RRT) in December 2004. He unsuccessfully sought judicial review at the Federal Court. In February 2006, the Minister exercised her discretion under s 48B and permitted Mr X to make another application for a PV. The DIAC decision to refuse a PV was set aside in August 2006 by the RRT. On 6 October 2006 Mr X was granted a Temporary Protection Visa (TPV).

## **Ombudsman consideration**

4. The DIAC report to the Ombudsman under s 486N is dated 25 August 2006.
5. Ombudsman staff interviewed Mr X at Glenside Hospital on 25 August 2006. Ombudsman staff also spoke to Mr X's Guardian.
6. Ombudsman staff have sighted a number of documents including: a psychology summary report from Professional Support Services (PSS) dated 3 August 2006, a medical report by a psychiatrist at Glenside Hospital dated 22 March 2006 and a Global Solutions Limited (GSL) Incident Report dated 8 May 2006.

## **Key issues**

### *Health and welfare*

7. The psychiatrist has diagnosed Mr X with Major Depression, Post-traumatic Stress Disorder (PTSD), and Psychogenic (reactive) Psychosis. Mr X attempted self-harm in February 2005, March 2005, and July 2005 and attempted to hang himself in August 2005 and August 2006.
8. The psychiatrist reported in March 2006 that *'He is vulnerable to high levels of anxiety and paranoid ideation, which can be triggered by exposure to official demonstration of force, i.e. from the guards ... From past experience it is clear that Mr X should not be held in an enclosed physical space, particularly if this is with close contact with guards'*. The psychiatrist recommended that Mr X *'should not be returned to a detention setting as this will trigger a resurgence of the PTSD and even with antipsychotic medication he is likely again to become acutely psychotic, to dissociate and to become dangerously, behaviourally disturbed ... in my opinion Mr X is ready for preparation for transfer of his care into the community'*.
9. By email on 24 April 2006, the Clinical Director of Glenside Hospital, informed DIAC that he had discussed Mr X's situation with the psychiatrist and an improvement in Mr X's mental state was noted. Mr X had indicated he wished to be placed in Baxter IDC where his friends were, rather than the Port Augusta Housing Project, and that the psychiatrist believed Mr X was fit to be returned to Baxter IDC. Mr X was transferred back to Baxter IDC on 27 April 2006.

10. After Mr X was returned to Baxter IDC, he was involved in several minor and major disturbances. On 8 May 2006 Mr X allegedly abused and attempted to attack the guards. The GSL Incident Report states that '[Mr X] ... was observed to have his room barricaded when staff checked on him for his SASH [Suicide and Self Harm] observations. Detainee then became abusive and aggressive attempting to attack staff with multiple weapons including chairs, hot water and a sharpened metal object'. The report notes that it was during a SASH observation at 2340 hours that the guard 'noted the door appeared to be locked ... after knocking several times being unable to raise the detainee ... requested that Operations Coordinator attend'. The guards opened the door by cutting a shoelace that was securing the door making it appear to be locked. After the guards explained to Mr X that as he was on SASH watch his door should not be secured in any way, he tried to push the guards out of his room and attempted to re-barricade the door. It was after this that the response 'officers need immediate assistance' was triggered and Mr X attempted to cause 'major personal injury to the officers'.
11. This alleged assault was referred to the South Australian Police (SAPOL) then referred to the Commonwealth Director of Public Prosecutions. It is noted that many incidents involving Mr X were referred to SAPOL while he was detained. It is understood that flowing from the above incident, he was charged with: Resist a Commonwealth Official (Four counts); Hinder/Obstruct a Commonwealth Official (Five counts); Threat to Cause Harm to a Commonwealth Official (Two counts); and Property Damage (One count). The Adelaide Magistrates Court dismissed the charges on the condition that Mr X be placed under the supervision of a Public Advocate for three years.
12. Mr X was also involved in an incident in August 2005 where his friend suffered a fractured ankle when guards attempted to remove Mr X to a management unit. This matter is referred to in Report 212/07.

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

13. Mr X was detained for two years and two months. His situation highlights some of the difficulties associated with the safety and security of both detainees and staff when detaining a person in long-term immigration detention when they are suffering from a mental illness. At interview Mr X reported to Ombudsman staff that he had no history of mental illness prior to arriving in Australia. He is now diagnosed with PTSD, Major Depression and a psychotic disorder. When he was discharged from hospital, he was returned to Baxter IDC and SASH observations were conducted. The presence of guards appears to have resulted in a response by Mr X predicted by the psychiatrist two months prior. Had DIAC and GSL been able to manage Mr X's self-harm concerns in a way that reflected the psychiatrist's advice, Mr X's escalation to violence may have been prevented. The psychiatrist noted in her March 2006 report that it was her opinion that Mr X was ready for preparation for transfer of his care into the community. The Ombudsman notes that DIAC was faced with a conundrum in this case in that the treating psychiatrists at the Glenside Hospital cleared Mr X as fit to return to immigration detention and he chose to remain at Baxter IDC, despite being offered the option of living in the residential housing unit at Port Augusta, which is also under the supervision of guards. The Ombudsman understands that the Detention Health Advisory Group is undertaking a review of the management of self-harm and DIAC has engaged Monash University to conduct a review of the suicide and self-harm protocols.
14. 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