

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 230/07

This is a combined third, fourth and fifth s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (51/06). The Ombudsman's combined first and second report was sent to the Minister on 6 March 2006 and tabled in Parliament on 10 May 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Detention history

1. Mr X was discharged from Glenside Hospital on 29 March 2006 and transferred to Villawood Immigration Detention Centre (IDC).

Current immigration status

2. Mr X remains an unlawful non-citizen detained at Villawood IDC.

Visa applications

3. A request under s 501J of the *Migration Act 1958* was referred to the Minister (May 2006), request dismissed (July 2006); s 501J request lodged on behalf of Mr X (May 2007), currently being assessed by the Department (DIAC); s 195A request referred to the Minister who declined to intervene (June 2007).

Ombudsman consideration

4. DIAC's further reports to the Ombudsman under s 486N were dated 10 July 2006, 10 January 2007 and 15 June 2007.
5. Ombudsman staff interviewed Mr X by telephone on 16 February 2007.
6. Ombudsman staff sighted the following documents: correspondence from the Glenside Campus Mental Health Service dated 6 March 2006; the Minister's Statement to Parliament tabled with Report 51/06 dated 9 May 2006; correspondence from Mr X's legal representative from the Refugee Advice and Casework Service (RACS) dated 23 May 2006 and 21 November 2006; three psychological summary reports from Professional Support Services (PSS) dated 1 June 2006, 11 December 2006 and 17 May 2007; three medical summary reports from International Health and Medical Services (IHMS) dated 30 October 2006, 19 January 2007 and 9 May 2007.

Key issues

Health and welfare

7. On 29 March 2006, Mr X was discharged from Glenside Hospital and transferred to Villawood IDC. The transfer became the subject of a complaint to DIAC from RACS in May 2006, which stated *'despite the clear and unambiguous medical advice consistently proffered to the Department on several occasions over the last 18 months that Mr X should not be returned to detention, this is precisely what the Department has done ... once again we request, as a matter of urgency, that the Department and the Minister explore alternative detention arrangements for Mr X, preferably by ordering a residence determination'*.
8. DIAC advises that Mr X was seen by an IHMS psychiatrist on 7 May 2006, 12 May 2006, 2 June 2006 and 28 July 2006. At the July appointment, *'the interview ended after a few*

minutes with Mr X stating he did not want to be seen by the psychiatrist again. The psychiatrist 'reports that Mr X was asked if he was suicidal, to which he stated he was not'.

9. PSS reports that Mr X was having regular contact with it, ranging from several times per week to monthly but although he has been offered ongoing counselling, PSS reported in May 2007 that *'he often refused to engage in counselling'* and the last contact was in March 2007.
10. PSS noted in June 2006 that he presented with *'poor coping, anger and frustration, hopelessness, depressed mood, isolation and sleeping difficulties ... Family responsibilities and long-term separation from his family, particularly his children, are causing significant psychological distress'*. It also stated that *'Mr X has been seen by PSS to manage his posttraumatic symptoms and related aggression. The provision of support has been useful but has not resulted in significant positive clinical outcomes'*. PSS was concerned that *'Mr X's refusal to engage in psychotropic medications may have a negative impact on the effectiveness of treatment interventions'*. The report concluded that his *'clinical presentation has deteriorated over time since being at VIDC'*, the prognosis was *'poor ... In addition to the diagnosis of PTSD, which stems from his past experiences, the long-term detention of Mr X is most likely compounding his psychological difficulties. It is likely that the ongoing detention environment will create further psychological issues'*.
11. The PSS report of December 2006 noted that Mr X's condition *'has deteriorated, with reports of increasing hopelessness ... Mr X has recently expressed that he does not wish to engage in regular contact with PSS ... His withdrawal from engagement with psychological support and previous refusal to consider psychotropic medications is an issue for concern. If this were to continue Mr X is likely to experience further deterioration in his mental health'*.
12. The PSS report of May 2007 stated that his *'clinical presentation continued to be poor. He exhibited poor control over his emotions and little ability to cope with the daily stresses of the detention environment ... The Mental Health Team Leader expressed concerns to DIAC regarding Mr X's mental health and his ability to cope in detention'*.
13. DIAC advises that on 25 May 2007, following Mr X's transfer to the Stage One compound, he commenced voluntary starvation and *'Mr X advised that he would not eat until he was transferred to the Sydney Immigration Residential Housing (SIRH) or a mental hospital'*. He was subsequently transferred to Fairfield Hospital on 28 May 2007 for voluntary hydration and Mental Health Assessment and returned to Villawood IDC that evening. On 31 May 2007 Mr X was voluntarily transferred to Fairfield Hospital again but he refused to be examined or administered intravenous fluids. On 1 June 2007, Mr X was transferred back to Stage Two compound and he re-commenced eating that day. PSS saw Mr X on 2 June 2007 and he remains under Suicide and Self Harm watch.
14. During his interview with Ombudsman staff in February 2007, Mr X stated he had lost more than eight kilograms through stress and depression. He also described his period of detention as time in *'a cage'* where he needed to ask for everything that someone outside detention took for granted, such as food or drink.

Other detention issues

15. DIAC advises that Mr X has been involved in a number of incidents where he has become *'verbally abusive, using threatening and profane language towards GSL [Global Solutions Ltd, the Detention Services Provider (DSP)] staff'*. On 24 May 2007, GSL noted an incident where Mr X *'became violent and abusive, including threatening to kill and commit sexual assault, against DSP officers engaged in searching his room ... Mr X was subsequently transferred from Stage Two to Stage One compound for the safety and good order of the centre. Mechanical restraints were used ... Mr X claimed to his department Case Manager on 30 May 2007 that he had reacted badly to this situation because of the way the DSP officers had approached this, and that it triggered his Post Traumatic Stress Disorder. Mr X claimed that sudden surprises and demonstrations of authority make him very distressed with agitation and high levels of anxiety and paranoia'*.

16. DIAC advises that on 1 June 2007, a GSL Incident Report states that Mr X approached a DSP officer claiming that he had been assaulted by two other DSP officers. *'Bankstown Police attended VIDC and began to interview Mr X however the police stated they could not continue due to Mr X's non-compliant behaviour ... Mr X claimed that that NSW Police Officers asked him inappropriate questions, insulted him and called him names. Mr X acknowledged he was verbally abusive in turn to NSW Police. The case note from the department officer states "Some GSL staff present at this interview witnessed the incident and acknowledged that the Police had insulted Mr X" Mr X has sent a written complaint about the incident to Minister Andrews, the Australian Federal Police, the United Nations High Commissioner for Refugees (UNHCR), Amnesty International and NSW Police'. Mr X has also lodged a complaint with the Commonwealth and Immigration Ombudsman.*

Attitude to removal

17. At interview, Mr X restated that he feared for his life should he be removed, saying *'Country A is too dangerous for me ... I will die after ten minutes I am sure ... the [political organisation] and these Muslim people, they will not forget me and they will not forgive me'. He also said that he does not wish to be removed to Country C, where he had previously resided as a refugee.*

Removal details

18. An International Treaties Obligations Assessment (ITOA) conducted by DIAC in February 2006 concluded there was a genuine risk that Mr X may be subject to treatment contrary to the International Covenant on Civil and Political Rights (ICCPR) should he be removed to Country A. The s 501J request currently with DIAC is on hold pending the completion of the most recent ITOA considering the possibility of removal of Mr X to Country A.
19. DIAC advises that the Minister, in declining to intervene under s 195A in June 2007, asked DIAC to pursue the following removal options, in order of priority: Country C; any other third-country options; Country A.

Ombudsman assessment/recommendation

20. Mr X has now been in immigration detention for more than five years. Various removal options continue to be explored by DIAC, though Mr X remains in a detention facility while that takes place.
21. In Report 51/06, the Ombudsman noted concerns about Mr X's mental health and his return to a detention centre. The Ombudsman also noted that DIAC should satisfy itself that Mr X will not be executed or tortured in Country A, before any removal to that country occurs. DIAC has determined that Mr X does face a real risk from Country A of treatment contrary to the ICCPR and DIAC is presently undertaking another ITOA. The Ombudsman recommended that the Minister explore alternative arrangements for Mr X, either Community Detention or release from detention on a Removal Pending Bridging Visa (RPBV) until his immigration status is resolved or removal arrangement finalised.
22. In her tabling Statement to Parliament in May 2006, the Minister said that the matter *'has taken some time to work through given the complex issues in this case. There are serious character concerns involved and a further international treaty obligations assessment needed to be completed. I have recently received a submission which provides me with options for dealing with this case. I am considering the matter but will not be rushed into a decision given the serious issues involved'. The Ombudsman notes that the Minister declined to consider a RPBV option for Mr X on 13 June 2007.*
23. Mr X's case is admittedly complex, but the Ombudsman considers that the need for alternative detention arrangements for Mr X are now more compelling. In forming that view, the Ombudsman notes that PSS has reported that Mr X's mental health has deteriorated since his return to a detention centre environment and it is concerned about his refusal to

engage with psychological support and take the suggested psychotropic medication. The most recent PSS report of May 2007 notes that the Mental Health Team Leader expressed concerns to DIAC about Mr X's mental health and his ability to cope in detention. From the various incidents mentioned in this report, it appears that Mr X is not coping with the detention environment.

24. The Minister noted serious character concerns in the May 2006 Statement to Parliament. DIAC advises that an external security agency interviewed Mr X in October 2006 and in March 2007, it cleared Mr X as not posing a direct or indirect threat to Australian national security.
25. In addition to those considerations that are personal to Mr X, it is important that his case be considered in the context of the stated immigration policy that a person should not remain indefinitely in immigration detention. A DIAC policy statement published in May 2006, *Detention Reforms*, lists the 'Detention Principles' that are to govern all cases. Principle 1 provides in part that '*Immigration detention ... is not indefinite ... detention*'; and Principle 6 provides that '*Clients are detained for the shortest practicable time, especially in centre-based detention*'.
26. In light of those considerations, the Ombudsman **recommends** that the Minister consider alternative detention arrangements for Mr X, allowing him to live in the community until his immigration status is resolved. If that recommendation is not accepted, the Ombudsman requests that the Minister's tabling statement explain why alternative detention arrangements will not be adopted for Mr X, and whether there is a reasonable prospect that the issue of Mr X's immigration status can soon be resolved.
27. If Mr X is released into the community, the Ombudsman recommends that DIAC consider what ongoing case management and mental health support may be appropriate.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

13 September 2007
Date