

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 278/07

This is the second s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (207/07). The Ombudsman's first report was sent to the Minister on 22 June 2007 and tabled in Parliament on 15 August 2007. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. Mr X lodged a s 417 request seeking the Minister's humanitarian discretion (March 2007), advised the Department (DIAC) that he was withdrawing his request (June 2007); lodged an appeal at the Full Federal Court, application dismissed (August 2007). Mr X's Barrister, Mr Y, advised that he was preparing a Special Leave Application to be filed on behalf of Mr X in the High Court.

Current immigration status

2. Mr X remains detained at Villawood Immigration Detention Centre (IDC).

Removal details

3. In June 2007 DIAC advised that as Mr X had no ongoing litigation at that time, removal processes had commenced and it was in the process of obtaining a travel document from Pakistani authorities.

Ombudsman consideration

4. DIAC's further report to the Ombudsman under s 486N of the *Migration Act 1958* is dated 28 June 2007 and the Minister's Statement to Parliament is dated 13 August 2007.
5. Ombudsman staff interviewed Mr X by telephone on 17 August 2007.
6. Ombudsman staff have sighted the following documents: a psychological report by Ms Z from the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) dated 28 March 2007; a psychological summary report from Professional Support Services (PSS) dated 12 June 2007; and a medical summary report from the International Health and Medical Services (IHMS) dated July 2007.

Key issues

Health and welfare

7. DIAC advises that Mr X has remained on Suicide and Self Harm (SASH) observation since January 2007 due to his history of threatening to self-harm. The PSS report noted that Mr X presented with anxiety attacks, general anxiety, self-harm ideation, depression and agitation. He was treated with cognitive behaviour therapy and attended an alcohol and drug treatment group. IHMS advised that Mr X had declined to see the visiting psychiatrist and was subsequently referred to STARTTS.
8. The STARTTS report noted that *'The onset of Mr X's PTSD [Post-traumatic Stress Disorder] symptoms may be linked to sexual intercourse with a member of the opposite sex as an adult ... [which] triggered flashbacks and memories of his early childhood*

abuse. The resultant anxiety, distress, impaired ability to function at university and difficulties in interpersonal relationships led to drug abuse ... Ongoing anxiety related to his refugee determination process, the uncertainty he experiences in detention and the fears at the prospect of having to return to his home country exacerbate his current symptomatology'.

9. At interview Mr X said that his psychological health is 'terrible'. He said *'the hopelessness and despair are just too much and because of the uncertainty - whether you are going to get an outcome or if it is going to be a favourable outcome - and however much longer are you going to have to endure this hellish torment ... it is the uncertainty that kills us in here'*. Mr X said that an external psychologist visits him regularly in an informal capacity and provides him with strategies to help him cope with ongoing detention. He said that despite the considerable amount of support he receives from people in the community, he is losing weight from the ongoing anxiety.
10. DIAC advises that Mr X has remained on the methadone program.

Attitude to removal

11. At interview Mr X said that he continues to fear returning to Pakistan. He said that he is in contact with his mother, however his father *'doesn't want to know me'*. He said that if he were removed it would be a *'desperate'* situation.

Other detention issues

12. At interview Mr X said that detention was a homophobic environment that was made worse by his length of time in detention. Mr X claimed that he is called derogatory names and is the subject of jokes by other detainees. He said that in response he *'hibernates'* and elects not to leave his room and socialise within the Stage One compound. He says he cannot have a normal life in detention and feels *'paralysed'*.
13. DIAC advises that Mr X has been offered a transfer to Stage Two or Stage Three. Mr X said that he has refused these offers as he does not want to be surrounded by a large number of people that he does not know, as the homophobic actions could potentially escalate.

Community support

14. At interview Mr X said that his partner, Mr A, visits him four times a week. Mr X said that he has requested approval to go on visits outside of Villawood IDC. DIAC advises that he was permitted to go on external visits on 3 May and 1 June 2007.

Relationship with Australian resident

15. DIAC advises that as Mr X is in a relationship with Mr A, an Australian Resident, he could apply offshore for an Interdependency Visa. However, he is likely to face an exclusion period before he can apply for this visa and he will have to come to a suitable arrangement to pay a large debt to the Commonwealth for the costs of his immigration detention before he can return. These factors may present a practical barrier to Mr X returning to Australia to live with Mr A.

Ombudsman assessment/recommendation

16. In Report 207/07 the Ombudsman recommended that if a final resolution of Mr X's immigration status was likely to be delayed, the Minister consider alternative detention arrangements or grant Mr X a suitable visa with work rights. The Minister's *Statement to Parliament* noted Mr X's *'placement in immigration detention continues to be reviewed'*.
17. Mr X has now been in detention for more than two and a half years and the medical evidence available to the Ombudsman indicates that he suffers from PTSD, anxiety and depression. The evidence is that his continuing detention, and the uncertainty generated

by his current immigration status, is exacerbating his mental health conditions. The Ombudsman's office is advised that a Special Leave Application on behalf of Mr X is to be filed in the High Court. It is therefore likely that it may be some time before DIAC can remove Mr X. In light of these factors, the Ombudsman reiterates the earlier **recommendation** that the Minister consider exercising his power to grant Mr X a suitable visa with work rights.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date