

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH OMBUDSMAN

Under s 486O of the Migration Act 1958

[The content of this report has had details removed and been modified for publication so as not to affect the privacy of Mr X, in accordance with s 486O (5)]

Personal identifier: 051/06

Ombudsman assessment/recommendation

1. Mr X has been in immigration detention for almost four years, mainly as a result of his attempts to obtain asylum in Australia.
2. Mr X's mental health is a matter of concern. Medical reports indicate that his mental health improved after he was removed from Baxter IDF in August 2005 and recommend that he not be returned to a detention centre. However, the psychiatrist at the hospital where he is being treated notes that it is no longer a suitable alternative place of detention for Mr X.
3. Mr X currently has a s 501J request before the Minister and his removal from Australia has been stayed until that matter is decided. The Ombudsman is aware that processing of this request is underway and DIMA is currently conducting an International Treaties Obligations Assessment (ITOA) into Mr X's protection claims. The DIMA report states that Mr X claims that his refugee status was previously recognised by Country C, although Country C will no longer accept him as a resident. Mr X asserts that he continues to need protection. While it has been found that Mr X does not satisfy the conditions of the Convention on the basis of his involvement in a serious non-political crime, the process failed to explore whether he is at risk of persecution if returned to Country A. It would be appropriate for the ITOA to address the potential risk to Mr X in Country A. The Ombudsman is of the view that DIMA should satisfy itself that Mr X will not be executed or tortured in Country A, before any removal to that country occurs.
4. In addition, before pursuing a return to Country A, DIMA will need to determine if Mr X is fit to travel. In reaching this decision, DIMA should be minded to assess whether Mr X's mental health issues can be adequately managed in Country A, especially as his health problems are related to his earlier experience in the army in that country and time spent in immigration detention in Australia.
5. Mr X has advised DIMA on a number of occasions that he is available for removal to a country other than Country A. The Ombudsman notes that DIMA explored removal to Country C, without success, but is not aware of similar inquiries with other countries. It may be appropriate for DIMA to continue to explore Mr X's removal to a safe third country, including possibly reopening discussions with Country C authorities.
6. While recognising the need for due consideration of the ITOA, the Ombudsman **recommends** that the Minister expedite her decision on Mr X's s 501J request, reaching a decision no later than the statutory period prescribed in s 486P for the tabling of this report in Parliament (viz, within 15 sitting days of receiving the report).
7. A number of issues impact on Mr X's current detention arrangements: possible delay in processing the s 501J request; examination of third country removal; medical concerns surrounding his return to a detention centre; and information that his continued stay at the Hospital is no longer appropriate. In light of these points, the Ombudsman **recommends** that the Minister explore alternative detention arrangements for Mr X, either by ordering a residence determination or by releasing him from detention on a Removal Pending Bridging Visa (with appropriate reporting and surety conditions) until his immigration status is resolved, and/or if appropriate, removal arrangements are finalised.

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Prof. John McMillan
Commonwealth and Immigration Ombudsman

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Date