

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 122/07*

This is the third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's combined first and second report (47/06). The Ombudsman's report was sent to the Minister on 6 February 2006 and tabled in Parliament on 28 March 2006. This report updates the material in that report and should be read in conjunction with it.

## Principal facts

### *Visa applications*

1. The Minister declined to exercise her powers under s 195A in relation to Mr X (March 2006); Mr X applied to the Minister under s 417 (March 2006); applied for a Bridging Visa (June 2006), refused (July 2006); DIMA sent a s 48B submission to the Minister (August 2006). The Minister has asked that further information be provided, pursuant to the s 48B submission. DIMA has advised that the s 417 submission will be recalled and a new combined s 417/48B submission will be prepared.

### *Current immigration status*

2. Mr X is an unlawful non-citizen at Baxter Immigration Detention Facility (IDF).

### *Removal details*

3. DIMA planned to remove Mr X to the People's Republic of China (PRC) in March 2006, however the removal was deferred after Mr X applied to the Minister under s 417. Removal is on hold pending the outcome of that submission and the later s 48B submission.

## Ombudsman consideration

4. DIMA's further report to the Ombudsman under s 486N of the *Migration Act 1958* is dated 10 July 2006.
5. Ombudsman staff interviewed Mr X on 9 November 2006 with an interpreter, and his migration agent Mr A attended by phone.
6. Ombudsman staff sighted a number of documents: copies of a letter from Sister B dated 17 March 2006; the Asylum Seekers Resource Centre (ASRC) application under s 417 dated 22 March 2006; psychology summary reports from Professional Support Services (PSS) dated 27 June 2006 and 22 November 2006; International Health and Medical Services (IHMS) summary reports dated 5 July 2006 and 20 November 2006; and two DIMA briefings to the Minister in relation to the PRC delegation visit (August 2006 and undated). Ombudsman staff spoke to Sister C in November 2006.

## Key issues

### *Health and welfare*

7. A past IHMS report stated that Mr X has depression. The November 2006 PSS report states Mr X has been receiving supportive counselling and complains of '*difficulties with concentration, lack of energy ... poor memory and poor sleep*'. The June 2006 PSS report concludes '*Given the length of Mr X's detention, it is unlikely for his mental state to*

*remain the same or improve with continuing detention', while the November 2006 PSS report states 'Mr X's withdrawal from meaningful activities is likely to impact on his mental health'.*

8. Sister C visits Mr X periodically in detention and reports that he has become more *'anxious, sad and strained'* in recent times. Mr X reports that his health has been poor, saying *'I can't fall asleep – there are too many things in my head ... I have been detained for such a long time that I am worried that I am going psycho'*. Mr X says he is unwilling to consult with a psychiatrist and *'the officers want me to but I don't like to'*. Mr A, his migration agent, attributed his reluctance to the stigma attached to mental illness in the PRC.
9. On 4 January 2007 Mr X was transferred to Toowong Private Hospital as a voluntary in-patient.

#### *Attitude to removal*

10. Mr X's migration agent reports that he is reluctant to return to the PRC because he has not resided there since he was 15 years of age and *'would have an extremely difficult time adjusting to a place that has become extremely foreign to him. He would feel alienated, foreign and have no supports available to him'*.

#### *PRC delegation*

11. In Report 47/06, the Ombudsman noted that Mr X had been interviewed by a PRC delegation in May 2005. DIMA examined the circumstances of this interview following several complaints to the Ombudsman's office and to the Human Rights and Equal Opportunity Commission. Although the DIMA investigation concluded that the interview was not a significant risk factor, it found that his Christianity had not previously been considered by DIMA. DIMA's undated briefing to the Minister on the PRC Delegation in relation to Mr X states *'Recent country information indicates that religious freedom for Catholics in China continues to be problematic ... adherents to Roman Catholic theology may be at risk ... DIMA records identify [Mr X] as a Catholic/Christian attending weekly services and a request has been received on his behalf from Sister [C] claiming that he would be at risk if he returned. This issue has not previously been considered'*.

#### *Family and community links*

12. PSS reports that Mr X was in a relationship with a person who was also in immigration detention, but that she was *'deported while allegedly being five months pregnant'*. Mr X reports that he has not had any contact with his former partner since she was removed.
13. Mr X says that he has contact with visitors from the Catholic Church, and keeps in regular telephone contact with friends in the town of Iluka, where he reportedly resided for a number of years.

### **Ombudsman assessment/recommendation**

14. Report 47/06 noted that there had been considerable delay by DIMA in effecting Mr X's removal and recommended that the Minister consider releasing Mr X from detention on a visa such as a Removal Pending Bridging Visa (RPBV) while his immigration status was determined. It also noted that the Minister might consider exercising her powers to grant Mr X a substantive visa in the public interest and on humanitarian grounds. The Ombudsman stated a number of factors were relevant including:
  - if Mr X came to Australia as a child, he would have had limited capacity to engage in migration formalities and organise an authorised entry permit;
  - he may face hardship if returned to the PRC because he claims to have lost contact with his family and suffers from depression; and

- for eight years while residing in the Australian community, Mr X appeared to make a positive contribution to Australian society.
15. In her tabling statement, the Minister stated she had considered whether to grant a RPBV and was *'not inclined to grant one at this time. Nonetheless, this option will be kept under ongoing review'*.
  16. The length and continuing nature of Mr X's detention continues to be a matter of concern. Mr X has now been in immigration detention for nearly four years. DIMA advised that it had put removal plans for Mr X on hold until it satisfied itself that the individuals interviewed by the PRC delegation were not exposed to any additional risk of persecution because of those interviews. DIMA's initial submission to the Minister in relation to the visit noted that Mr X is one of a group *'where the claims appear to be weaker [than others] but where we cannot give you assurances that protection issues may not have been raised'*. Since then, DIMA has concluded that Mr X's interview did not give rise to a risk of persecution but referred his case to the Minister under s 48B on the basis of new information that he has been baptised. The Minister is also currently considering Mr X's application under s 417. The Ombudsman **recommends** that the Minister make a decision on Mr X's s 48B and s 417 submissions as soon as possible and in any case not later than the statutory period prescribed in s 486P of the Migration Act for tabling this report in Parliament (*viz.* within 15 sitting days of receiving this report).
  17. It has been over eleven months since the Minister last considered Mr X's case, and his mental health has declined in that period. It is possible that he may remain in detention for some time, particularly if the outcome of the Minister's consideration of his case results in a decision to allow him to make another application for a PV. The Ombudsman considers that, in light of Mr X's poor mental health and the length of his detention, the case for resolving his immigration status is now more compelling than at the time of completing Report 47/06. The Ombudsman **recommends** that Mr X not be returned to an immigration detention facility unless clear medical advice indicates that his mental health is stable and will not deteriorate. The Ombudsman further **recommends** that the Minister again consider granting Mr X a visa (with appropriate reporting conditions to reduce the risk of absconding). Alternatively, it may be appropriate to consider alternative detention arrangements. It appears that Mr X would have community support if he were released. The Ombudsman also reiterates comments made in Report 47/06 that there are a number of factors that may incline the Minister towards granting Mr X a substantive visa.
  18. The Ombudsman notes that if Mr X remains in detention, a further report under s 486N will fall due in January 2007. At the time of completing the next report on Mr X, the Ombudsman will review his circumstances, considering again the impact of detention upon his health and the suitability of continued detention in an immigration detention facility.

*U. Thom*

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 Dr Vivienne Thom  
 Acting Commonwealth and Immigration Ombudsman

*11 January 2007*

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 Date