

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 123/07

This is a combined second and third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (29/06). The Ombudsman's first report was sent to the Minister on 17 January 2006 and tabled in Parliament on 29 March 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. The Department (DIMA) advised that a s 195A submission for consideration of the use of the Minister's detention intervention powers was forwarded to the Minister who declined to intervene (March 2006). At interview with Ombudsman staff Mr X said he was preparing a s 417 submission to the Minister.

Current immigration status

2. Mr X remains detained at Villawood Immigration Detention Facility (IDF).

Removal details

3. DIMA advised that until recently, it had continued to liaise with the People's Republic of China (PRC) Consulate regarding issuing a travel document to effect Mr X's removal from Australia. However, DIMA advised that Mr X had been uncooperative with removal arrangements as he fears persecution if he returns to the PRC. A travel document was issued by the PRC Consulate on 29 November 2006. However, DIMA has advised that removal has been put on hold pending discussions between DIMA, the Human Rights and Equal Opportunity Commission (HREOC) and Mr X's solicitor, regarding his complaint to HREOC concerning his interview with a delegation from the PRC in May 2005.

Ombudsman consideration

4. Two further DIMA reports to the Ombudsman under s 486N of the *Migration Act 1958* dated 6 January 2006 and 23 June 2006, and the Minister's Statement to Parliament dated 28 March 2006.
5. A follow-up telephone interview with Mr X with an interpreter was held on 7 September 2006.
6. Ombudsman staff sighted a number of documents: a DIMA Ministerial submission relating to the PRC delegation cases dated 7 July 2006; International Health and Medical Services (IHMS) mental state examination assessments dated 12 July 2006 and 30 October 2006; and an IHMS medical summary report dated 16 November 2006.

Key issues

Health and welfare

7. DIMA advise that in June 2006 Mr X was diagnosed with an adjustment disorder and depression. He was given anti-depressant medication, however he voluntarily ceased treatment in August 2006. At interview Mr X said that the prescribed medicine did not work and that he is going to request new medicine. The IHMS assessment (July 2006)

stated that Mr X's 'affect is flat, mood low, warm rapport. Describes feeling depressed, "I can't get myself cheered up anymore". Describes reduced energy, reduced motivation, loss of enjoyment in activities, decreased concentration'. The IHMS assessment (October 2006) stated that Mr X 'admits to experiencing thoughts of self-harm but states he would not act on these. Feels he does not have the energy'. DIMA further advise that Mr X has continued to undertake supportive counselling and that he has been given medication for sleep difficulties and asthma.

Attitude to removal

8. Mr X told Ombudsman staff that if he is removed to the PRC, he fears being persecuted for his Falun Gong practices and his promotion of Falun Gong as a movement in Australia and in the PRC.

PRC delegation issues

9. Flowing from complaints to HREOC and the Ombudsman regarding interviews conducted by the delegation from the PRC in May 2005, DIMA reviewed Mr X's case against s 48B guidelines. DIMA advised in December 2006 that the PRC delegation interview raised no s 48B issues. DIMA attended a conciliation meeting with Mr X's representative and HREOC on 13 December 2006. A further meeting will take place in January 2007.

Other detention issues

10. Mr X said at interview that he still practices Falun Gong daily at Villawood IDF, either alone or in a group setting and this helps him to cope with his continuing detention.

Ombudsman assessment/recommendation

11. In Report 29/06, the Ombudsman noted lengthy delays in removing Mr X, which led to Mr X spending a long period in detention, perhaps unnecessarily. The Ombudsman stated that 'if there is to be any further delay in removing Mr X, the Ombudsman recommends that the Minister consider granting him a Removal Pending Bridging Visa (RPBV) (subject to conditions that DIMA deem necessary to ensure that he does not abscond) while the issues concerning his removal from Australia are resolved'. The Minister's statement to Parliament on 29 March 2006 stated that 'I note the comments in relation to delays in removal processes in this case. The delay is regrettable but action has been taken to avoid this in the future. I have looked at the issue of whether a Removal Pending Bridging Visa should be granted and I have declined to use my detention intervention powers in this case'.
12. The length and continuing nature of Mr X's detention continues to be a matter of concern. Twelve months have elapsed since the Ombudsman made the recommendation that, if there was to be any further delay in removing Mr X, consideration be given to granting him a visa to enable his release from detention. He has now been in immigration detention for over four years and the recent medical evidence indicates that he has been diagnosed with an adjustment disorder and depression. The risk of his mental health deteriorating further is likely to increase with his continued detention.
13. It is possible that Mr X may remain in detention for some time yet, particularly if the conciliation process with HREOC is prolonged. The Ombudsman considers that, in light of the concerns about Mr X's mental health and the length of his detention, the case for releasing him is now more compelling than at the time of completing Report 29/06. The Ombudsman **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 that would enable his release from Villawood IDF.

14. The Ombudsman notes that if Mr X remains in detention, a fourth 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.

V. Thom

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Dr Vivienne Thom
Acting Commonwealth and Immigration Ombudsman

11 January 2007

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Date