



## Two years in immigration detention

Report on the Ombudsman's 2012 s486O

long-term immigration detainee reviews

May, 2013

### Executive Summary

1. The Commonwealth Ombudsman tabled 297 reviews in Parliament throughout 2012 pursuant to s 486O of the *Migration Act*. This represents a six-fold increase on the 52 reviews tabled in 2011. A further 66 reviews were tabled in March 2013.
2. Of the 2012 reviews, 184 (61%) were asylum seekers who had been in immigration detention for two years or more. Others were suspected or convicted of people smuggling offences. 42 of the 66 reviews tabled in March 2013 related to asylum seekers.
3. 96 asylum seekers were still in detention facilities at the time of their review, and these people were far more likely to suffer from detention-induced or –exacerbated mental health issues.
4. 130 people were recently released from detention facilities into the community as lawful non-citizens, however continued to be in detention at the time their review was triggered.
5. 80% of asylum seekers reviewed suffered from mental health problems.
6. 68% of asylum seekers reviewed suffered from mental health problems as a direct result of, or exacerbated significantly by their detention.
7. Not all asylum seekers who reported pre-existing mental health issues (including torture or trauma) had those issues exacerbated by their detention. Equally, not all asylum seekers who reported detention-induced or –exacerbated mental health problems had a history of mental illness or torture and trauma.
8. The Ombudsman made recommendations in 37% of cases, and the Minister responded to half of those recommendations with substantive action.

## 1. Introduction

Humanitarian Research Partners (HRP) is a non-profit human rights and humanitarian research organization that undertakes specialized research and advocacy services for refugees, asylum seekers and NGOs in Australia.

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This report analyses the Commonwealth and Immigration Ombudsman's reviews of asylum seekers as tabled in Parliament under s 486O of the *Migration Act 1954* (Cth) between March 2012 and March 2013. Detention reviews are conducted if a person has been in immigration detention for two years or more. Regular reviews are mandated every six months if a person remains in immigration detention, pursuant to s486M(b) *Migration Act*.

The Ombudsman's reviews set out the principal facts of a case, including personal details, detention history, visa applications, current immigration status, and describe any documents relied on in making the review. The reviews then proceed to discuss any criminal history, health and welfare, other detention issues and any other relevant considerations. The Ombudsman can make recommendations at the end of a review. All reviews are available online at: <http://www.ombudsman.gov.au/reports/immigration-detention-review/>

## 2. Research methodology

This report is based on the Immigration Ombudsman's s 496O reviews, related documents including the Minister's Tabling Statements, the Ombudsman's covering letters, and extrinsic documents referred to in the reviews as necessary.

## 3. Conclusions

1. Continued detention causes deteriorating mental health, and unlawful immigration status correlates to high levels of detention-induced or –exacerbated mental illness. Symptoms rapidly improve when an asylum seeker is released from detention into the community.

A significant proportion of asylum seekers reviewed reported detention-induced or –exacerbated mental illness, which is of great concern. The government should conduct a full investigation of factors contributing to such conditions, and put in place measures to mitigate mental harm.

2. The government should investigate the causes of substantial delays in visa and security assessment processing, particularly for asylum seekers who have been in immigration detention for two years or more and have not had their applications finalised.

3. The government should reconsider the ‘no advantage’ principle before the immigration detention system is overwhelmed with long-term detainees who are at very high risk of developing serious mental health problems.
4. The Minister’s failure to take substantive action to rectify problems raised by the Ombudsman’s reviews could amount to a breach of the government’s duty of care, particularly when failure to act on concerns raised results in further deterioration of health conditions, self-harm or suicide.  
The government should consider the human rights implications of long-term immigration detention, and investigate whether its policies give rise to actionable breaches of its duty of care to detainees.
5. The Ombudsman’s review recommendations are seldom followed with substantive action, and are not subject to holistic analysis either by the Ombudsman’s office or any other body. Low rates of recommendations and a lack of enforceability and long-term accountability render the process ineffectual.
6. The Ombudsman only made recommendations in 37% of reviews, which is surprising given the high rates of mental illness and detention-related stress. Recommendations are not given often enough, and are seldom followed with meaningful action.
7. The November 2012 *dark review* cluster does not meet review standards, and raises questions about the Ombudsman’s capacity to handle large amounts of reviews to be tabled in a single period. Given the Ombudsman’s unique mandate to report on serious issues facing asylum seekers in long-term immigration detention, it is imperative that the Ombudsman rectifies this oversight and provides comprehensive data for the 73% of reviews (*dark reviews*) tabled in the November session.

#### 4. Recommendations

1. The Government should:
  - a) amend Section 486O(4) *Migration Act 1954* (Cth) to the following:
    - (4) The Minister is bound by recommendations the Commonwealth Ombudsman makes, where the Ombudsman clearly states his intention that the Minister be bound.
  - b) amend s 486L *Migration Act 1954* (Cth) to include the following:
    - (c) If the person is in immigration detention in a Regional Processing Facility for a period of over six months.
 and amend the title of Part 8C to:
 

Part 8C—Reports on long-term immigration detainees
  - c) investigate its liability for breaches of its duty of care in relation to the prevalence of detention-induced and –exacerbated mental health conditions;
  - d) empower the Australian Law Reform Committee and the Australian Human Rights Commission to conduct a joint inquiry into potential breaches of Australia’s international legal and treaty obligations.

2. The Ombudsman must:
  - a) rectify the inadequacy of *dark reviews* tabled in November 2012; and
  - b) resume inspections of offshore refugee processing centres at Nauru and Manus Island.
3. The Ombudsman should:
  - a) issue follow-up reports where recommendations were made in a review;
  - b) conduct comprehensive analysis of s 486O review trends on a regular basis; and
  - c) report findings of that research to Parliament periodically.
4. The Ombudsman's reviews should:
  - a) make more recommendations as to the appropriateness of continued restrictive detention; and
  - b) include a discussion of the human rights implications of continued detention.
5. The Ombudsman should be given the power to:
  - a) make binding recommendations regarding place and conditions of detention based on mental and physical health evaluations;
  - b) recommend detention service providers be fined for failure to comply with mental health policies;
  - c) compel the Department to finalise an asylum seeker's protection application as soon as practicable, and explain any delays; and
  - d) compel ASIO to finalise an asylum seeker's security assessment as soon as practicable, and explain any delays.

ENDS EXCERPT

This is a brief extract from a full and detailed research analysis report. The full report is available at the Humanitarian Research Partners website:

<http://www.humanitarianresearchpartners.org/1/post/2013/05/analysis-of-the-ombudsmans-s-486o-long-term-immigration-detainee-reviews.html>

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