

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X who has remained in restricted immigration detention for a cumulative period of more than 48 months (four years).

The first assessment 1002248 was tabled in Parliament on 17 June 2015 and the second assessment 1003203 was tabled in Parliament on 31 August 2016. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A/Country B (dual citizenship), born in Country B
Year of birth	1969
Ombudsman ID	1001244-O
Date of DIBP's reviews	12 August 2016 and 10 February 2017
Total days in detention	1,458 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003203), Mr X remained at Wickham Point Alternative Place of Detention.	
11 May 2016	Transferred to Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

12 August 2016	The Department of Immigration and Border Protection (the department) advised that since involuntary removals to Country A are currently not viable, Mr X's involuntary removal to Country B was scheduled for 10 August 2016. On 2 August 2016 the department identified that removal to Country B was not possible as Mr X's protection claims against Country B had not been assessed by Independent Merits Review (IMR) and as such his case warranted further assessment against Australia's <i>non-refoulement</i> obligations.
19 October 2016	The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a Temporary Protection visa (TPV) application.
2 November 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a TPV application. He accepted the offer on 10 November 2016 and was assigned a provider.
4 November 2016	Found to meet the guidelines for referral to the Minister under s 195A.
29 November 2016	Lodged a TPV application.
12 January 2017	TPV application found invalid under ss 91N and 91P. The department advised that Mr X's TPV application is now taken to be a request for the Minister to consider exercising his public interest powers under s 91Q to find the application prohibition does not apply in Mr X's case.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X attended weekly counselling sessions with a psychologist and frequently engaged with the mental health team following an incident of minor assault by another detainee in April 2016 which exacerbated his anxiety. In May 2016 Mr X reported improvement in his condition and ceased counselling.</p> <p>IHMS further advised that Mr X was referred for physiotherapy and prescribed with pain medication following back pain.</p>	
April 2016	An Incident report recorded that Mr X was a victim of a minor assault by another detainee.

Other Matters

3 January 2017	Mr X lodged a complaint with the Ombudsman's office in relation to being placed in mechanical restraints when transferred between facilities. The matter remains under investigation.
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Information provided by Mr X

<p>During an interview with Ombudsman staff at Yongah Hill IDC on 22 May 2017 Mr X advised that he was re-detained in 2014 after declining to sign a Code of Behaviour form.¹ Mr X explained that he refused to sign the form as he believed he had not done anything wrong and therefore he shouldn't have to sign it. Mr X expressed frustration and confusion regarding delays in processing his protection claims and the number of documents that he was required to sign.</p> <p>Mr X stated that the medical treatment provided was appropriate and that he has no current mental or physical health concerns. He keeps in contact with his mother and siblings who he calls frequently. He stated that nothing seems to change in his situation so he doesn't have much to tell them, he just wants to make sure they are alright.</p>

¹ Since 14 December 2013 all adult maritime arrivals must sign a Code of Behaviour before they can be considered for the grant of a Bridging visa. The Code of Behaviour was introduced to help ensure that maritime arrivals living in the community on Bridging visas are aware of community behavioural expectations and behave appropriately while in the Australian community.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for more than four years. The department advised that Mr X was on a removal pathway, however his protection claims against Country B require assessment before removal can be actioned.

The Ombudsman further notes advice from the department that removal to Country B is not possible as Mr X's protection claims against Country B had not been assessed by IMR and as such his case warrants further assessment against Australia's *non-refoulement* obligations.

On 19 October 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a TPV and on 29 November 2016 Mr X lodged an application.

Mr X was notified on 12 January 2017 that his TPV application was invalid and his application is now taken to be a request for the Minister to consider exercising his public interest powers under s 91Q.

The Ombudsman notes with concern that Mr X has remained in restricted detention for more than three years following his re-detention in May 2014, and that Mr X was re-detained after declining to sign a document that he alleged he did not understand.

The Ombudsman recommends that the Minister expedite the consideration of his public interest powers under s 91Q and strongly recommends that the Minister consider granting a Bridging visa to Mr X while he awaits the resolution of his immigration status.