

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Mr X who remained in immigration detention for more than 48 months (four years) before his death on 8 November 2015.

The first report 1001277 was tabled in Parliament on 5 March 2014, the second report 1001508 was tabled in Parliament on 1 October 2014 and the third report 1001949 was tabled in Parliament on 27 May 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Stateless (claimed), born in Country A
Year of birth	1981
Ombudsman ID	1002451
Date of DIBP's reports	4 May 2015 and 20 October 2015
Total days in detention	1,458 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001949), Mr X remained at Melbourne Immigration Transit Accommodation (ITA).	
5 December 2014	Mr X was transferred to Brisbane ITA.
5 June 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).
19 September 2015	Transferred to Christmas Island Immigration Detention Centre (IDC).
6 November 2015	Mr X escaped from Christmas Island IDC.
8 November 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X was pronounced dead after his body was found outside the perimeter fence of Christmas Island IDC.

Recent visa applications/case progression

4 May 2015	DIBP advised that it was preparing to refer Mr X's case on a ministerial submission for consideration of lifting the bar under s 46A of the <i>Migration Act 1958</i> and consideration under ss 195A and 197AB for the grant of a Bridging visa or community detention placement.
25 June 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a Temporary Protection visa (TPV) application. On the same day the Minister agreed to consider a community detention placement for Mr X under s 197AB (pending a further submission) but declined to consider granting Mr X a Bridging visa.
1 July 2015	DIBP invited Mr X to lodge a TPV application.
19 August 2015	Mr X lodged a TPV application.

22 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a Safe Haven Enterprise visa (SHEV) application.
29 September 2015	DIBP invited Mr X to lodge a SHEV application.
8 November 2015	Mr X's body was found outside Christmas Island IDC.

Health and welfare

24 February 2015	<p>International Health and Medical Services (IHMS) advised that Mr X had previously been diagnosed with a deviated septum and groin hernia and had seen specialists. However, he was unable to complete treatment because he was transferred to a different detention facility.</p> <p>Mr X was reviewed by a general practitioner (GP) on 24 February 2015 who reported that neither of his physical health concerns required urgent repair, but recommended that Mr X be referred to a specialist once he was settled in one location. The GP further advised that if Mr X's hernia worsened he would need to go straight to hospital.</p> <p>In its previous report (dated 10 November 2014) IHMS advised that Mr X had been on a waiting list for surgery to repair his deviated septum since 25 May 2012.</p> <p>At the time of his death in November 2015 Mr X was still awaiting specialist referrals for his conditions.</p>
28 March 2015 – 4 June 2015	IHMS advised that Mr X attended five appointments at hospital including an admission for mental health issues.
24 May 2015	A DIBP Incident Report recorded that Mr X was displaying uncharacteristic behaviour, appearing to be delirious and repeatedly stated 'I'm going to die'. He was transferred to hospital and discharged that day.
25 May 2015	A DIBP Incident Report recorded that Mr X displayed bizarre and aggressive behaviour including taking his clothes off and hitting a Serco officer. IHMS advised that he was taken to hospital by ambulance and admitted but tests identified no abnormalities.
2 July 2015	A DIBP Incident Report recorded that Mr X was behaving erratically and told Serco officers that he needed to see the mental health team (MHT) because 'he would die in here'. He attempted to climb over an internal fence and was restrained by Serco officers and taken for a medical assessment.
15 July 2015	A magnetic resonance imaging scan of Mr X's brain identified no abnormalities.
15 August 2015	DIBP Incident Reports recorded that Mr X climbed onto a roof at Wickham Point APOD and was pacing near the edge. Mr X reportedly told Serco officers that he had climbed onto the roof because he had suicidal thoughts. He was escorted down from the roof and assessed by a mental health nurse, who advised that he should be closely monitored by Serco staff.
17 August 2015	Placed on moderate Supportive Monitoring and Engagement (SME) observations.

15 September 2015 – 16 September 2015	<p>A DIBP Incident Report recorded that Mr X climbed onto a shade cloth but could not remember how or why he did so. IHMS advised that he was reviewed by a psychologist and placed on high SME observations.</p> <p>A further DIBP Incident Report recorded that Mr X threatened to kill himself if he was transferred to a higher security compound. IHMS advised this was necessary to enable high SME observations.</p>
22 September 2015	Mr X was reviewed by a psychiatrist who reported that he suffered from anxiety and experienced some somatic symptoms which were exacerbated by stress.
28 September 2015	IHMS advised that Mr X's mental health issues were being managed by increasing his medication. IHMS further advised that there was no clinical evidence to suggest that Mr X's health was likely to be adversely affected by his current placement in restricted detention.
29 September 2015	Mr X attended a mental health review and advised he was feeling anxious and had thoughts of self-harm but denied wanting to act on them. Mr X said he thought that he had brain cancer because he experienced frequent headaches. He was referred to the GP to discuss his concerns and kept on SME observations.
30 September 2015	Reviewed by the GP and prescribed with pain relief medication for dental pain. The GP noted that Mr X showed no signs of psychosis or other mental health issues.
2 October 2015	Mr X expressed thoughts of self-harm and attended the IHMS clinic where he received supportive counselling. He was placed on high imminent SME observations and referred for review by a psychiatrist.
3 October 2015	Mr X was noted to be much calmer than the previous day. He stated he had felt anxious after discussing his situation with his case manager but felt better and did not want to harm himself. His SME observation level was downgraded to ongoing.
6 October 2015	Mr X was reviewed and SME observations were ceased as his mood was considered stable.
15 October 2015	Mr X had been scheduled to have an electroencephalogram of his brain in Darwin to test for possible disorders but the appointment was rescheduled as the Australian Border Force (ABF) advised that Mr X could not be accommodated in Darwin due to security issues.
4 November 2015	IHMS advised that Mr X collapsed, advising that he had a headache and chest pain. He also stated that his brain was coming out of his nose. He was examined by a GP who identified no physical abnormalities but suggested that Mr X might have a delusional disorder and increased the dosage of his medication.
6 November 2015	IHMS advised that Mr X told medical staff that he felt liquid running down from his brain into his body 'like yoghurt'. He was provided with supportive counselling and reviewed by the MHT who did not identify any acute mental health concerns.

Recent detention incidents

31 October 2014	A DIBP Incident Report recorded that Mr X was the victim of ongoing bullying by a group of detainees.
8 July 2015	A DIBP Incident Report recorded that Mr X threatened to escape.
6 October 2015	A DIBP Incident Report recorded that Mr X damaged a microwave, a toaster and a television.
6 November 2015	A DIBP Incident Report recorded that Mr X escaped from Christmas Island IDC.
8 November 2015	Following search and rescue operations Mr X's body was discovered outside the Christmas Island IDC perimeter fence. He was pronounced dead and his body was transported to hospital by ambulance.

Other matters

9 November 2015	The Ombudsman's office opened an investigation into the administrative processes surrounding Mr X's death. DIBP provided its response on 9 December 2015 and the investigation was closed on 2 February 2016.
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Ombudsman assessment

Mr X was detained on 23 October 2011 after arriving in Australia aboard Suspected Illegal Entry Vessel *Nicklin* and was held in immigration detention for over four years before his death on 8 November 2015.

Mr X was found to be owed protection under the Refugee Convention in March 2012. On 25 June 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 19 August 2015 Mr X lodged a TPV application.

The Ombudsman notes advice from IHMS in September 2015 that Mr X had been unable to complete treatment for a groin hernia and deviated septum because of transfers between detention centres. The Ombudsman notes that at the time of Mr X's death in November 2015 he had been waiting for over three years for surgery to repair his deviated septum.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. The Ombudsman notes that Mr X had a history of serious mental health issues, and that DIBP Incident Reports and Mr X's IHMS Health Summary Reports show a significant increase in incidents of self-harm and bizarre behaviour during his time in detention.

The Ombudsman notes that Mr X's cause of death is the subject of a coronial inquiry and an investigation by Comcare. The Ombudsman makes no recommendations in this report.