

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 has remained in immigration detention for more than 54 months (four and a half years).

The first report 1649/13 was tabled in Parliament on 4 December 2013, the second report 1001400 was tabled in Parliament on 1 October 2014 and the third report 1002129 was tabled in Parliament on 14 October 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1980 |
| Ombudsman ID | 1000853-O |
| Date of DIBP's report | 22 December 2015 |
| Total days in detention | 1642 (at date of DIBP's report) |

Recent detention history

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| Since the Ombudsman's previous report (1002129), Mr X remained at Facility B. | |
| 13 August 2015 | Transferred to Facility C. |
| 16 December 2015 | Transferred to Facility D. |
| 17 March 2016 | Transferred to Facility E. |
| 7 April 2016 | Transferred to Facility F. |

Recent visa applications/case progression

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| 7 July 2015 | The Administrative Appeals Tribunal (AAT) ¹ requested Mr X provide a written submission of all claims made in his application by 20 July 2015. The Department of Immigration and Border Protection (DIBP) advised that Mr X's hearing was scheduled for 27 July 2015. However, it was postponed at Mr X's request and a new hearing was scheduled for 2 February 2016. |
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¹ On 1 July 2015 the Migration Review Tribunal and the Refugee Review Tribunal (RRT) were merged into the AAT.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to experience chronic pain due to condition G resulting from an incident in November 2013. In its five reports to the Ombudsman since this incident IHMS has advised that Mr X is on a waiting list for surgery. In its most recent report dated 24 November 2015, IHMS advised that Mr X is on a hospital waiting list but no appointment date was available at that time. He is prescribed with pain relief medication and has been referred for scans.

In its report dated 27 June 2015 IHMS advised that a Q medical accessory had been requested for Mr X. IHMS's most recent report did not indicate whether Mr X had received this.

Mr X continues to suffer from depression, anxiety, insomnia and post-traumatic stress disorder. He has an extensive history of self-harm and mental health concerns requiring ongoing psychiatric risk assessments and monitoring for possible side-effects of his medication. Mr X's psychiatrist noted that he is suffering from neurotic depression as a result of his detention fatigue and isolation from his family and advised that Mr X's condition is unlikely to improve while he remains in restricted detention given his history of depression and self-harm while detained.

Other matters

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| 29 July 2015 | <p>Mr X lodged a complaint with the Ombudsman's office concerning his accommodation compound at Facility B and the impact it was having on his health.</p> <p>On 28 August 2015 DIBP advised that Mr X had been transferred from Facility B to Facility C. The complaint was finalised on 16 September 2015.</p> |
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Information provided by Mr X

During a telephone conversation with Ombudsman staff on 20 May 2016 Mr X advised he had recently been on a hunger strike following a negative decision from the AAT and had experienced significant physical side effects.

Mr X expressed concern that a DIBP officer had informed him his protection claims would not progressed while he remained on a hunger strike. He also claimed the officer said if he ceased his hunger strike he would be released into the community but this did not happen.

Mr X advised he was still awaiting surgery and is in constant pain. He is only given Panadol for pain relief and his condition G is worsening. Mr X stated his condition was caused from an attempted suicide. He recently declined external physiotherapy appointments following DIBP's requirement that he is handcuffed to and from appointments. He has been informed the surgery should take place sometime over the next two or three months.

When asked if Mr X received a Q medical accessory, he stated he no longer has it as the hospital informed him he no longer required it. Mr X said he is limited in what activities he can participate in due to his condition but enjoys painting and drawing.

Mr X advised he has sought judicial review by the Federal Court and a hearing is scheduled for June 2016.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

The Ombudsman notes with concern that Mr X has been waiting for over two and a half years for surgery to resolve his chronic pain, and that at the time of IHMS's most recent report Mr X was still waiting to be allocated an appointment. The Ombudsman notes that Mr X has been transferred to three different detention centres since that report and recommends that IHMS follow up Mr X's surgery as a matter of priority.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged restricted immigration detention may pose. In the case of Mr X, the Ombudsman notes that he has been in detention for more than four and a half years and during this time has experienced significant mental and physical health problems.

The Ombudsman notes the advice from a psychiatrist in November 2015 that Mr X's depression is being exacerbated by his prolonged detention and isolation from his family, and that his mental health is unlikely to improve while he remains in restricted detention.

The Ombudsman recommends that consideration be given to transferring Mr X to community detention.