

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 60 months (five years).

The first report 1000972 was tabled in Parliament on 12 February 2014 and the second report 1001473 was tabled in Parliament on 18 March 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1953
Ombudsman ID	1002325
Date of DIBP's reports	19 March 2015, 7 September 2015 and 7 March 2016
Total days in detention	1819 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001473), Mr X has remained at Villawood Immigration Detention Centre.

Recent visa applications/case progression

8 October 2014	The Independent Reviewer conducted a review of Mr X's adverse security assessment.
15 December 2014	The adverse security assessment was affirmed by the Independent Reviewer, who recommended a further review in 12 months.
10 March 2015	The Department of Immigration and Border Protection (DIBP) advised that following Mr X's request for revocation of the former Minister's decision to cancel his Protection visa on 29 November 2011, a revocation submission was being progressed under s 501 of the <i>Migration Act 1958</i> .
1 June 2015	DIBP invited Mr X to make further representations for the Minister's consideration on the revocation of the cancellation decision.
29 June 2015	Mr X provided a response.
2 February 2016	Referred on a ministerial submission under s 501 for the Minister to consider revocation of the former Minister's decision.

Health and welfare

International Health and Medical Services (IHMS) advised that since the Ombudsman's previous report Mr X has been diagnosed with type 2 diabetes and had also been provided with review and treatment for a range of physical health issues including ongoing chest pain, gastro-oesophageal reflux disease, and pain possibly associated with an abnormal liver. IHMS advised that Mr X had been reassured that investigations had found his chest pain was non-cardiac related, and he has been referred to a gastroenterologist for further review concerning his other conditions.

IHMS advised that Mr X's previously reported chronic neck and arm pain had resolved following orthopaedic review.

Mr X also continued to be provided with support and review from the mental health team (MHT) for ongoing mental health issues including a history of torture and trauma and an adjustment disorder with anxiety and depressed mood. He also continued to attend specialist counselling.

Psychologist reports advised that Mr X displayed a range of symptoms associated with the stress of long-term indefinite detention and lack of resolution of his case. The psychologists repeatedly recommended that to assist Mr X's psychological recovery Mr X be transferred to the community while his immigration case is being finalised.

IHMS advised that mental health assessments conducted in November and December 2015 had noted a deterioration in Mr X's mental health and he continued to be monitored by the MHT. IHMS reiterated that the psychologists had noted that Mr X's psychological well-being was affected by prolonged detention and should be considered in relation to his detention placement.

Other matters

7 March 2016	DIBP advised that the complaint lodged by the Australian Human Rights Commission (AHRC) on behalf of Mr X remained open. On 18 December 2015 DIBP received the final views of the AHRC and on 8 March 2016 DIBP responded.
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Information provided by Mr X

During a telephone conversation with Ombudsman staff on 9 February 2015 Mr X advised that he has not had his adverse security assessment reviewed since the end of 2014, but had spoken with his lawyer a week earlier and understood that his case was with the Minister.

Mr X advised that he has multiple health problems and feels that his physical and mental health have deteriorated in the last year. He stated that he had suffered two heart attacks and was scheduled for specialist review. He also advised that he had been diagnosed with diabetes. He said he had no issues with the medical treatment he is receiving and feels he is treated very well by medical staff.

Mr X said that his mental health had already been affected by his experience in Country A and escaping the militia and that this has been compounded by his detention experience. He stated that everything he has told DIBP is true and he has not tried to mislead DIBP. He stated that he cannot return to Country A for fear of his life and that there is no guarantee that he can be protected.

He stated that generally he is treated well by detention staff and has no issues with the detention facilities.

Ombudsman assessment/recommendation

Mr X has remained in restricted detention for a cumulative period of more than five years. He was previously granted a Protection visa, which the former Minister cancelled under s 501 on 29 November 2011 after Mr X was assessed by the Australian Security Intelligence Organisation as a risk to security and was issued with an adverse security assessment.

The Ombudsman notes that DIBP advised that Mr X's adverse security assessment was last reviewed in December 2014. The Ombudsman also notes that at the time of DIBP's latest report, Mr X's case had been referred to the Minister to consider revoking the cancellation decision.

The Ombudsman remains seriously concerned about the risk that an indeterminate period of detention poses to Mr X's physical and mental health, and notes that IHMS has advised of a decline in Mr X's mental state.

To mitigate further deterioration of Mr X's health issues and in consideration of his age and the length of time he has been in restricted detention, the Ombudsman strongly recommends that the Government give priority to finding a solution that reconciles the management of any security threat with its duty of care to immigration detainees, including considering alternative avenues for managing any security threat.