

## 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 restricted immigration detention for more than 48 months (four years).

The first report 1001111 was tabled in Parliament on 11 December 2013, the second report 1001406 was tabled in Parliament on 27 August 2014, and the third report 1001689 was tabled in Parliament on 4 March 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1971
<b>Ombudsman ID</b>	1002173
<b>Date of DIBP's reports</b>	9 January 2015 and 6 July 2015
<b>Total days in detention</b>	1,459 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001689), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

### Recent visa applications/case progression

14 July 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. <sup>1</sup>
12 August 2014	He provided his response concerning the privacy breach.
9 January 2015	DIBP advised that it was assessing whether Mr X had raised further protection related claims as a result of the privacy breach.
14 January 2015	DIBP commenced an International Treaties Obligations Assessment (ITOA) to assess whether Mr X's case engaged Australia's <i>non-refoulement</i> obligations.
14 April 2015	DIBP determined under the ITOA that Mr X's case does not engage Australia's <i>non-refoulement</i> obligations.
6 July 2015	DIBP advised that Mr X's case was being assessed against the guidelines under s 195A of the <i>Migration Act 1958</i> for a possible referral to the Minister for his consideration to grant a Bridging visa.

<sup>1</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

## Health and welfare

2 July 2014 – 6 July 2015	International Health and Medical Services (IHMS) advised that there had been no reported issues concerning the blindness in his right eye.
July 2014	Due to a history of chronic hepatitis B and C, Mr X had further tests to monitor his condition in accordance with state policy. He was also referred to a liver clinic and a gastroenterology clinic for review.
26 August 2014	<p>The psychologist reported that since Mr X was transferred from Maribyrnong IDC to Yongah Hill IDC Mr X's mental health had declined due to the ongoing uncertainty about his immigration pathway and the loss of his support network in Melbourne.</p> <p>The psychologist advised that Mr X had displayed considerable reserves of resilience and mental health resources in order to survive a total of 15 years institutionalisation, which included 12 years in correctional facilities. However, his reserves of mental strength had been undermined because of ongoing detention.</p>
18 December 2014	IHMS reiterated the psychologist's assessment of 26 August 2014 that Mr X's mental health was likely to be further exacerbated by remaining in restricted detention with no family support structures.
July 2015 – ongoing	A mental health assessment reported that Mr X was coping well with his situation and he was made aware of the self-referral process to the mental health team (MHT) if he needed to seek support.
21 September 2015	An appointment at the infectious disease clinic was scheduled for this date and his hepatitis condition was monitored by the general practitioner.

## Other matters

15 April 2015	Mr X's ITOA states that a psychiatric report was provided, dated 1 July 2013, which advised that Mr X was diagnosed with a brain injury. The ITOA further states that Mr X sustained the brain injury from a childhood accident, and that this resulted in cognitive impairment, characterised by poor short-term memory and forgetfulness in the conduct of everyday activities.
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### Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X advised that the Australian government wanted to return him to Country A, but he could not return because he has been in Australia for such a long time. He said he understood from his solicitor that he must wait for the Minister to make a decision about his case.

Mr X said that his physical health was good and he had seen a doctor about his mental health and had been told his mental health was 'normal'. He stated that as he had been in detention for such a long time his mind was a little tired and he was getting forgetful. He said that the MHT regularly check on him and he has not experienced any problem with seeing health professionals.

Mr X said that he does not sleep well and woke regularly. But he did not tell IHMS because he thought they would only want to give him medication and he did not want to take medication of any kind.

He said that he no longer took part in many activities as he had been in detention for too long and felt he was quite old so did not want to do anything. He said occasionally he participated in drawing classes. He explained that he was not motivated to participate to obtain points<sup>2</sup> and because of his age he found it difficult to concentrate.

Mr X said his parents have both died. He sometimes contacts his brothers and sisters and they visited him when he was in Melbourne. He said nobody knows he is at Yongah Hill IDC, so he has no visitors.

### Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. His case was assessed under an ITOA and was found not to engage Australia's *non-refoulement* obligations.

DIBP advised that Mr X's case is being assessed against the guidelines under s 195A for possible referral to the Minister for his consideration to grant a Bridging visa.

The Ombudsman notes that DIBP was provided with a psychiatric report dated 1 July 2013 which advised that Mr X was assessed with a brain injury which resulted in cognitive impairment. The Ombudsman notes that the psychiatrist's report is dated after Mr X was initially detained on 8 July 2011.

The Ombudsman notes with serious concern that none of the five IHMS Health Summary Reports advised that Mr X has a brain injury. The Ombudsman recommends that IHMS review Mr X's health needs in relation to his acquired brain injury, as reported in the ITOA.

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<sup>2</sup> Section 6, Clause 5.6 of the Immigration Detention Facilities and Detainee Services Contract stipulates that Serco must implement and manage DIBP's approved Individual Allowance Programme (IAP) in each detention facility. Through the IAP, detainees are allocated points that can be exchanged for a variety of goods on offer, such as telephone cards, tobacco and snack food, at the facility shop managed by Serco.