

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 54 months (four and a half years).

The first report 1638/13 was tabled in Parliament on 4 December 2013, the second report 1001269 was tabled in Parliament on 9 July 2014 and the third report 1001952 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	Country A
Year of birth	1973
Ombudsman ID	1002452
Date of DIBP's reports	27 April 2015 and 23 October 2015
Total days in detention	1,640 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001952), Mr X remained at Facility B.	
10 September 2015	Transferred to Facility J.

Recent visa applications/case progression

23 October 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X is on a removal pathway. However, it cannot progress his removal as he and his family are refusing to undergo DNA testing as required by Country A for the issuance of a Country A passport.
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Health and welfare

12 November 2014 – 30 September 2015	International Health and Medical Services (IHMS) advised that Mr X has presented with low mood during this reporting period but there have been no reported exacerbations of his behavioural concerns. IHMS further advised that Mr X had maintained his medication regime and has had access to the mental health team as required.
7 April 2015 – ongoing	IHMS advised that Mr X presented with lower back pain which was treated with pain relief medication with good effect. On 13 July 2015 a radiology examination returned normal results.
15 July 2015	Presented with a laceration to his chin. He was referred to an emergency department as he required sutures. However, IHMS reported that Mr X elected not to attend this referral as he had a visitor scheduled to see him at Facility B.

20 August 2015	Pathology results indicated inflammation of his liver. Mr X's general practitioner (GP) provided him with education and advice on how to manage his condition to ensure no further damage occurs.
30 September 2015	IHMS advised that since its previous report to the Ombudsman in November 2014, there have been no reported exacerbations of Mr X's hepatitis C condition.

Recent detention incidents

Since the Ombudsman's previous report, Mr X has allegedly been involved in numerous incidents at Facility B including abusive and aggressive behaviour towards staff, damaging property, and possessing contraband which included illicit drugs and drug paraphernalia.

Information provided by Mr X

During an interview with Ombudsman staff at Facility B on 3 September 2015 Mr X advised that his wife, children, grandchildren, mother and father are all still residing in State C. His family visits him at Facility B when they can but his mother is too ill to travel.

He said that when his family come to State B to visit him they are only allowed to see him for one hour per day, and sometimes not at all if the visits room is not available. When he was located at Facility C his family would visit him on a regular basis and could stay for extended periods of time.

Mr X stated that he had originally been informed that his transfer from Facility C to Facility B was only temporary and when the renovation were completed he would be returned to Facility C. He expressed concerns that DIBP cannot explain why this transfer has not occurred despite him being located at Facility B for over 18 months.

He said that he 'hasn't been a saint in detention' but he has been in detention for a very long period of time with no end in sight. Mr X advised that he would like to be transferred to a State C detention facility to be close to his family.

Ombudsman assessment/recommendation

Mr X has been held in restricted immigration detention for more than four and a half years. He has no matters before DIBP, the courts or tribunals and is on a removal pathway. However, DIBP continues to advise that it is unlikely that Mr X will be returned to his country of citizenship until Country A authorities are satisfied that evidence, including DNA testing which Mr X has refused to undertake, supports Mr X's identity as a Country A national.

The Ombudsman notes that there has been no progression of Mr X's immigration status since May 2013, due to the apparent impasse between the requirements of Country A authorities and the unwillingness of Mr X to meet these requirements.

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's previous report 1001952 recommended that if Mr X was interested, consideration be given to transferring him to a State C detention facility so he is nearer to his family support network while he awaits resolution of his immigration status.

In his statement to Parliament on 27 May 2015, the Minister noted the Ombudsman's recommendation and advised that Mr X's detention placement is regularly reviewed and remained appropriate at that time.

Notwithstanding this, the Ombudsman recommends that Mr X is again considered for a transfer to a State C detention facility so he is closer to his family support network while he awaits resolution of his immigration status.