

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 60 months (five years).

The first report 1108/12 was tabled in Parliament on 13 November 2013, the second report 1001232 was tabled in Parliament on 25 June 2014 and the third report 1001905 was tabled in Parliament on 13 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	1972
Ombudsman ID	1002396
Date of DIBP's reports	14 April 2015 and 19 November 2015
Total days in detention	1,881 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001905), Mr X remained at Facility B.	
26 October 2015	Transferred to Facility D.

Recent visa applications/case progression

16 December 2014	The Department of Immigration and Border Protection (DIBP) advised that Mr X's Protection visa application was deemed to be an application for a Temporary Protection visa (TPV) and assessment would include consideration of character requirements in relation to his prior criminal history.
7 January 2015	Mr X was issued with a letter inviting him to comment on information provided in his Protection visa application.
19 January 2015	His legal representatives provided a response.
16 April 2015	His case was found to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> and a submission was being prepared for referral to the Minister to consider granting Mr X a temporary visa while his Protection visa application is being finalised.
28 April 2015	TPV application was refused under Article 1F(B) of the Refugee Convention. However, DIBP determined that Mr X met the complementary protection criterion.
4 May 2015	Mr X was notified of the TPV refusal decision and appealed to the Administrative Appeals Tribunal (AAT) (no date provided).
12 May 2015	The AAT commenced a review of DIBP's decision.
1 October 2015	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.

14 October 2015	The Minister requested further information from DIBP about Mr X's case. On the same day the Minister declined to intervene under s 195A.
30 November 2015	Mr X withdrew his review application with the AAT. DIBP advised that this prompted an interview for removal.
21 December 2015	A removals team met with Mr X at Facility D to provide him with information on the removal process.

Health and welfare

10 October 2014 – 21 May 2015	International Health and Medical Services (IHMS) reported that Mr X continued to be monitored by an IHMS psychologist and the mental health team. He attended counselling as required and was prescribed with antidepressant medication.
6 March 2015 – ongoing	IHMS advised that Mr X was identified with a heel spur which caused ongoing pain and swelling. He was prescribed with pain relief and anti-inflammatory medication and referred for a steroid injection.
2 April 2015	He was scheduled to attend an appointment with an orthopaedic specialist concerning the osteoarthritis in his knees. IHMS advised that the hospital cancelled the appointment and he was referred to another hospital. He was awaiting an appointment.
22 May 2015 – 28 October 2015	IHMS advised that no concerns for Mr X's mental health were reported. However, he continued to be prescribed with antidepressant medication.
9 June 2015 – 21 October 2015	Attended four podiatrist appointments for his heel pain. On 21 October 2015 he was discharged from podiatry services. The podiatrist recommended a steroid injection and referred him to a physiotherapist. IHMS advised that both appointments were pending.
18 July 2015 – 26 July 2015	Admitted to hospital for treatment of a knee ligament injury sustained on 18 July 2015. He was discharged on 26 July 2015 and provided with a knee brace for two weeks and pain relief medication.
14 August 2015	Attended an orthopaedic review. IHMS reported that his knee ligament injury was resolved but his osteoarthritis would be reviewed as required.

Recent detention incidents

20 March 2015	A DIBP Incident Report recorded that Mr X was allegedly one of several detainees who caused a major disturbance by climbing on the roofs of compound accommodation.
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Other matters

27 January 2016	<p>The Ombudsman's office commenced an investigation into Mr X's claims that he had been advised by DIBP that he will be involuntarily removed to Country C unless he can arrange a visa to a third country.</p> <p>On 11 February 2016 DIBP advised that there is no legislative capacity to involuntarily remove asylum seekers to Country C and it is not undertaking or planning to undertake involuntary removal of asylum seekers to Country C.</p> <p>The investigation was finalised on 29 February 2016.</p>
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Information provided by Mr X

During an interview with Ombudsman staff at Facility B in September 2015 Mr X said he felt 'exhausted' after being in detention for five years. He advised that while detained at Facility B he had been intimidated on numerous occasions by detainees who had previously served time in prison. He said he felt very unsafe at Facility B and as a result of the intimidation he had experienced he avoided participating in sporting activities and kept to himself. Mr X said he did not report these incidents because he did not think it would improve the situation.

Mr X stated that being at Facility B has been his worst experience of detention and he would like to be transferred back to Facility D so that he can feel safe.

During a telephone conversation with Ombudsman staff on 27 January 2016 Mr X advised he was now located at Facility D but raised his concern he may be involuntarily removed to Country C in the near future. This followed advice he claimed was provided to him when interviewed by the DIBP removals team in December 2015. He stressed he is from Country A and cannot return to Country C.

Mr X said he would like the government to know that if he was released into the community he would not be seeking financial support as his family can support him.

Ombudsman assessment/recommendation

Mr X has been previously found to be owed protection under the Refugee Convention. He has remained in restricted immigration detention for more than five years.

The Ombudsman notes that on 28 April 2015 Mr X's TPV application was refused under Article 1F(b) of the Refugee Convention but he was found to be owed protection under the complementary protection criterion.

The Ombudsman's previous report (1001905) recommended that Mr X be considered for transfer to community detention or released on a Bridging visa while awaiting a decision on his protection claims. The Ombudsman notes that on 14 October 2015 the Minister declined to grant Mr X a Bridging visa.

The Ombudsman notes the Government's duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose. Given the length of time Mr X has been in restricted detention the Ombudsman continues to be concerned about the ongoing effect of detention on Mr X's physical and mental health.

To mitigate further deterioration of Mr X's health issues and in consideration of his State Q-based father having a terminal illness, the Ombudsman recommends that Mr X be reconsidered for a Bridging visa or a transfer to community detention while he awaits resolution of his case.