

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fifth s 486O report on Mr X who has remained in restricted immigration detention for period of more than 48 months (four years). The previous reports are:

Report 1001136 tabled in Parliament on 5 March 2014

Report 1001425 tabled in Parliament on 18 June 2014

Report 1001728 tabled in Parliament on 4 March 2015

Report 1002206 tabled in Parliament on 12 August 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>	1985
<b>Ombudsman ID</b>	1003046
<b>Date of DIBP's report</b>	21 July 2015
<b>Total days in detention</b>	1,461 (at date of DIBP's report)

### Recent detention history

Since the Ombudsman's previous report (1002206), Mr X has remained at Facility C.

### Recent visa applications/case progression

1 June 2015	A request for ministerial intervention was made to lift the bar under s 46A of the <i>Migration Act 1958</i> , as well as for consideration of alternative management options under ss 195A and 197AB.
1 July 2015	The Minister intervened under s 46A to lift the bar and allow Mr X to lodge a Temporary Protection visa (TPV). The Minister declined to intervene under ss 195A and 197AB.
21 July 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X has submitted a TPV application and is awaiting the outcome.

### Health and welfare

20 December 2014 – 18 July 2015	International Health and Medical Services (IHMS) advised that since Mr X had moved to a new compound at Facility C and was learning new skills, his mental health had 'greatly improved'. Consequently the mental health team would only see him as required and not on a regular basis.  IHMS also advised that Mr X had not raised any concerns about his previously reported chronic shoulder pain.
21 April 2015	A DIBP Incident Report recorded that Mr X had allegedly threatened self-harm to his girlfriend via email. No further information was provided.

22 May 2015	Presented to the general practitioner with concerns about multiple skin lesions in his mouth and on other parts of his body. IHMS advised that he was prescribed with medication and on 17 July 2015 he underwent pathology tests to investigate potential causes. The results were pending.
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**Other matters**

25 May 2015	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC) alleging that DIBP had breached his human rights. DIBP advised it responded to the AHRC on 1 July 2015. On 6 July 2015 the AHRC advised DIBP that Mr X had advised that he considered the complaint resolved and it was closed.
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**Information provided by Mr X**

During a telephone conversation with Ombudsman staff on 13 October 2015 Mr X advised that he has applied for a TPV and had received an acknowledgment from DIBP that it had received his visa application.

Mr X said that he cannot understand why he is still in detention. He was very distressed about his ongoing situation and asked why nobody can tell him how much longer he has to be in detention.

**Ombudsman assessment/recommendation**

Mr X has been found to be owed protection under the Refugee Convention. On 1 July 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 21 July 2015 Mr X lodged a TPV application and is awaiting the outcome.

Mr X has been in immigration detention for more than four years, during which time IHMS has reported ongoing mental health concerns. The Ombudsman notes that IHMS advised on 18 July 2015 that Mr X's mental health had 'greatly improved' since its report six months earlier. Notwithstanding this, the Ombudsman notes with concern that a DIBP Incident Report recorded that Mr X threatened self-harm in April 2015. The Ombudsman further notes the Government's duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite detention may pose.

In consideration of the length of time Mr X has been in immigration detention and concerns for his mental health, the Ombudsman recommends that Mr X be reconsidered for a Bridging visa or community detention while he is awaiting the outcome of his TPV application.