

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 more than 60 months (five years).¹

The first report 973/12 was tabled in Parliament on 20 March 2013 and the second report 1000975 was tabled in Parliament on 29 October 2014. 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	1986
Ombudsman ID	1002114
Date of DIBP's reports	19 December 2014 and 30 June 2015
Total days in detention	1,835 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1000975), Mr X has remained at Villawood Immigration Detention Centre (IDC).

Recent visa applications/case progression

The Ombudsman's previous report (1000975) stated that Mr X had been found not to be owed protection under the Refugee Convention and the complementary protection criterion. However, on 1 February 2012 the Department of Immigration and Citizenship determined under an International Treaties Obligation Assessment (ITOA) that Mr X's removal to Country A would breach Australia's <i>non-refoulement</i> obligations.	
30 July 2014	The Department of Immigration and Border Protection (DIBP) referred a submission to the former Minister for his consideration under s 197AB of the <i>Migration Act 1958</i> for a community detention placement
16 September 2014	The former Minister declined to approve a community detention placement for Mr X.
19 December 2014	DIBP advised that its records indicated that due to the lapse in time since the previous ITOA, a new ITOA was to be conducted. DIBP further advised that as the positive ITOA finalised on 6 February 2012 was still valid, it prepared a submission under s 46A for the former Minister to consider lifting the bar to allow Mr X to lodge a Protection visa application.
13 February 2015	DIBP referred a submission for ministerial intervention under ss 46A(2), 195A and 197AB.

¹ DIBP advised on 30 June 2015 that it previously reported on Mr X in 60 and 66 month reports under s 486N of the *Migration Act 1958*. However, due to changes in the reporting requirement for time spent serving a custodial sentence, DIBP stated that Mr X was now deemed to have been in immigration detention for 60 months.

20 February 2015	DIBP commenced a second ITOA following the expiry of the first ITOA.
5 March 2015	The Minister lifted the s 46A bar to allow Mr X to lodge a Temporary Protection visa (TPV) application. DIBP advised that as a result it ceased processing the second ITOA. The Minister declined to intervene under ss 195A and 197AB to consider granting a Bridging visa or community detention placement.
30 March 2015	Mr X was invited to apply for a TPV.
13 April 2015	Mr X lodged a TPV application.
16 June 2015	DIBP issued Mr X a Notice of Intention to Consider Refusal (NOICR) of his TPV application under s 501 because of his criminal conviction. It invited him to respond to the NOICR by 14 July 2015.

Health and welfare

28 June 2014 - 12 December 2014	International Health and Medical Services (IHMS) reported that Mr X's ongoing back pain continued to be managed with strong pain relief medication and regular physiotherapy. IHMS advised that his pain relief medication was reviewed to reduce the dosage and an alternative medication was prescribed. He reportedly declined to take this. Mr X attended an appointment at a pain management clinic on 3 December 2014.
7 July 2014 - 3 December 2014	Mr X attended 14 appointments with a specialist counselling service.
21 July 2014 - 8 December 2014	Mr X attended 17 appointments with a physiotherapist.
21 August 2014	A DIBP Incident Report reported that Mr X threatened self-harm during an interview with his DIBP case manager. No further information was provided.
22 September 2014 - ongoing	IHMS reported that Mr X had admitted to obtaining opioid pain medication which had not been prescribed to him. The IHMS psychiatrist saw Mr X and reported that Mr X was using opioid pain medication because he was experiencing severe pain. The mental health team (MHT) reported that Mr X was provided with support and education regarding drug withdrawal and he was referred to a specialist at a pain management clinic.
13 October 2014	A DIBP Incident Report recorded that an ambulance was requested because Mr X had a suspected serious illness. He allegedly threatened self-harm and threatened to harm detention staff. No further information was provided.
3 December 2014	Mr X attended an appointment with a pain specialist about ongoing back pain. He was referred for a magnetic resonance imaging scan which revealed a minor abnormality.

12 December 2014	<p>Mr X received ongoing monitoring and counselling from the MHT and the specialist counselling service in relation to his adjustment disorder with anxiety and depressed mood. He had also been prescribed with antidepressant medication.</p> <p>IHMS advised that Mr X had continued to present with frustration because of his immigration situation and ongoing pain.</p>
21 January 2015	<p>Mr X was referred to the cardiologist for testing for Marfan Syndrome which IHMS advised was a genetic condition affecting connective tissue. An appointment had been scheduled for 31 July 2015.</p>
1 February 2015	<p>A DIBP incident report recorded that Mr X had threatened self-harm if he was not given a single room.</p>
3 March 2015 - 27 May 2015	<p>Attended a further seven appointments with a specialist counselling service.</p>
19 May 2015 - 23 June 2015	<p>Attended a further six physiotherapy appointments for ongoing back pain.</p>
30 June 2015	<p>IHMS advised that Mr X continued to see the MHT and the specialist counselling service for ongoing monitoring and counselling but he was no longer prescribed with antidepressant medication.</p> <p>IHMS advised that Mr X continued to withdraw from opioid pain medication after a history of substance abuse and the GP was monitoring his symptoms.</p> <p>IHMS further advised he was not on any pain relief medication and his back pain was being managed with regular physiotherapy.</p>

Recent detention incidents

DIPB Incident Reports recorded that Mr X was involved in numerous disturbances and minor incidents of abusive or aggressive behaviour towards detention centre staff.

Other matters

2 December 2014	<p>DIBP advised that the Australian Human Rights Commission closed the complaint which Mr X had lodged on 12 July 2012.</p>
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Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

Case status

Mr X was previously found to be owed protection under the complementary protection criterion. DIBP has advised that this assessment has now expired.

On 30 March 2015 the Minister intervened and lifted the s 46A bar. Mr X lodged a Temporary Protection visa application on 13 April 2015 and DIBP has advised that assessment of his application is ongoing.