

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X who has remained in restricted immigration detention for more than 36 months (three years).

The first report 1001692 was tabled in Parliament on 29 October 2014. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1967
Ombudsman ID	1002170
Date of DIBP's reports	6 January 2015 and 6 July 2015
Total days in detention	1,098 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001692), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).	
20 November 2014	Transferred to Q hospital, Queensland, designated as an Alternative Place of Detention.
18 - 19 December 2014	Discharged from hospital and returned to Yongah Hill IDC via Brisbane Immigration Transit Accommodation (ITA).

Recent visa applications/case progression

23 April 2014	Mr X requested ministerial intervention under ss 417 and 48B of the <i>Migration Act 1958</i> . DIBP advised on 6 January 2015 that the requests would be progressed after assessment of Mr X's response to the data breach was completed.
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. ¹
21 July 2014	Mr X provided a response in relation to the privacy breach.
24 December 2014	Mr X lodged a Bridging visa application which was refused the same day.
31 December 2014	Applied to the Migration Review Tribunal (MRT) for review of the Bridging visa refusal.
12 January 2015	The MRT affirmed the decision to refuse the Bridging visa application.

¹ 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.

14 January 2015	An International Treaties Obligations Assessment (ITOA) was initiated as Mr X was affected by the privacy breach.
23 March 2015	The ITOA determined that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
26 March 2015	Mr X requested judicial review by the Federal Circuit Court (FCC) of the ITOA decision.
1 April 2015	Found not to meet the guidelines for referral to the Minister under s 48B.
16 April 2015	The Assistant Minister declined to intervene under s 417.
22 July 2015	At a directions listing in the FCC, Mr X's hearing was scheduled for 4 December 2015.

Health and welfare

6 August 2014	International Health and Medical Services (IHMS) reported that Mr X presented to the mental health team (MHT) following alleged bullying and assault by his roommate on 5 August 2014. He was treated for superficial injuries and placed under Supportive Monitoring and Engagement (SME) observations and regular review by IHMS. Mr X was moved to other accommodation within the detention facility, where it was reported he initially felt safer.
6 September 2014	During a regular review of Mr X's adjustment disorder and depression, which was diagnosed on 5 October 2012, IHMS stated that Mr X denied any thoughts or plans to self-harm. However, he continued to display depressive symptoms and was isolating himself.
8 September 2014	Mr X presented to the IHMS general practitioner (GP) with back pain. Mr X claimed it was related to the alleged assault by his roommate on 5 August 2014. He was prescribed with pain relief medication and referred for a chest x-ray.
10 September 2014	Mr X revealed he still felt fearful and intimidated when he saw the person who assaulted him and stated that he could not sleep because of ongoing worry. It was noted that he had stopped participating in group discussion and was isolating himself.
16 September 2014	A chest x-ray was conducted to determine the cause of Mr X's back pain.
21 September 2014	IHMS reported that the x-ray result was consistent with chronic airways disease. As Mr X was a heavy smoker he was educated about this disease and the ongoing risks of smoking.
10 October 2014	The psychiatrist reported that Mr X was in a constant state of unease, was not reactive, and his mood was one of hopelessness and despair. The psychiatrist also reported that while Mr X did not appear to be at an acute risk of suicide, detention was harmful to Mr X's mental health. The psychiatrist recommended a transfer to Sydney where Mr X could be in contact with his wife and daughter. His medication was adjusted and he was referred for psychiatric review.

7 November 2014	<p>At a follow-up appointment with the psychiatrist, Mr X was diagnosed with a major depressive disorder. The psychiatrist reported that while Mr X did not have thoughts of suicide, Mr X had commented that he could find no meaning with his life while he continued to be detained.</p> <p>The psychiatrist also reported that Mr X 'would deteriorate further, possibly to a non-salvageable state, and that ongoing detention environment is deleterious to his mental state'. It was suggested to Mr X that he be admitted to a psychiatric hospital as he would receive better treatment. Although he was initially hesitant, he later agreed to this treatment.</p>
20 November 2014 - 18 December 2014	Mr X was transferred to a psychiatric hospital where he was regularly assessed and his medication was adjusted.
18 December 2014	<p>IHMS reported that Mr X attempted to self-harm after he was told he would be discharged from hospital that day. An incident report recorded that Mr X slashed both of his arms. He was admitted to a general hospital to assess and treat his wounds and then returned to Yongah Hill IDC via Brisbane ITA.</p> <p>Mr X was placed under SME observations at a high level and prescribed with antidepressant medication.</p> <p>A report from the hospital following the self-harm episode stated that Mr X had said he intended to commit suicide as he did not want to return to Country A. The report stated that Mr X was uncertain of his future because of his immigration status and it appeared his coping mechanisms were overwhelmed by the unexpected discharge from the psychiatric hospital. It was also reported that Mr X's suicide risk was high because of his situation.</p>
19 December 2014	IHMS reiterated the psychiatrist's report of 7 November 2014 that ongoing detention was harmful to Mr X's mental state.
Late December 2014	IHMS stated that Mr X was advised of a negative decision by DIBP and presented with acute distress with poor impulse control. He denied suicidal thoughts and commented that he had a situational crisis. He attended ongoing psychology treatment sessions, during which he presented with depressed mood, difficulty sleeping and some social isolation.
2 January 2015	The IHMS psychiatrist commented that Mr X was at ongoing risk of deterioration in his mental state and of suicide in the near future.
16 January 2015	The psychiatrist again recommended that Mr X be transferred to Sydney as this would be of therapeutic benefit.
30 January 2015	The psychiatrist commented that prolonged detention was making Mr X unwell and medication had only a limited benefit.
March 2015	Presented with further deterioration in his mental health and was placed under SME observations again.

19 March 2015	<p>The IHMS psychiatrist advised that Mr X continued to display depressive symptoms and suicidal ideas. Mr X commented that he would like to be placed in Villawood IDC so he could be close to his family. He advised he was not suicidal but could not guarantee what would happen in the future and stated that he could be impulsive in action.</p> <p>The psychiatrist stated that Mr X remained chronically at risk.</p>
29 April 2015	<p>The IHMS GP commented that Mr X presented with ongoing depression and reported suicidal thoughts. He also reported ongoing insomnia for which he was previously prescribed sleeping tablets.</p>
26 June 2015	<p>IHMS advised that Mr X had an extensive history of suicide attempts and self-harm for which he had required multiple hospital admissions.</p> <p>IHMS stated that there had been no recent concerns reported about Mr X's mental health, and that he continued to be prescribed with antidepressant medication. However, IHMS reiterated the psychiatrist's ongoing comments about Mr X's mental health being at ongoing risk of deterioration and a risk of suicide should he remain in immigration detention.</p>

Other matters

6 January 2015	<p>DIBP advised that Mr X's wife, Ms Y, remained in the community unlawfully and her whereabouts were unknown.</p>
30 January 2015	<p>Mr X lodged a complaint with the Ombudsman's office about his detention circumstances and in particular about his detention placement at Yongah Hill IDC. Mr X advised that he wanted to be transferred to Villawood IDC so his relatives could easily visit him. He also raised concerns about his mental health and had advised that his condition had improved while he was being treated at the psychiatric hospital.</p> <p>Following an investigation, the Ombudsman's office provided a better explanation to Mr X that due to capacity issues at Villawood IDC he could not be transferred there at that time. The Ombudsman's office was also satisfied that DIBP was aware of Mr X's mental health issues and that it was continuing to take reasonable steps to provide ongoing monitoring and treatment.</p>

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

The Ombudsman's previous report (1001692) noted that Mr X was transferred to Yongah Hill IDC on 11 April 2014 and recommended that consideration be given to transferring Mr X back to Villawood IDC so that he would be able to maintain regular contact with his family and friends while his case progressed.

In his tabling statement of 24 October 2014 the former Minister advised that he would refer Mr X to Villawood IDC for possible relocation. However, DIBP's review of 6 January 2015 stated that on 7 October 2014 Villawood IDC advised it was unable to support the transfer request at that time due to capacity issues and Mr X would be considered for relocation to Villawood IDC upon a place becoming available.

The Ombudsman notes that IHMS has reported ongoing concerns about Mr X's mental health which has resulted in multiple hospitalisations and an extensive history of suicide attempts and self-harm. The Ombudsman also notes that in its latest report IHMS has reiterated the ongoing concerns raised by the psychiatrist regarding Mr X's wellbeing. This includes the risk of deterioration in Mr X's mental state and risk of suicide if he remains in detention, as well as the psychiatrist's recommendations that Mr X be transferred to immigration detention in Sydney for therapeutic benefit.

The Ombudsman recommends that in light of Mr X's significant and ongoing mental health issues priority be given to reconsideration to transfer Mr X to Villawood IDC so he can be closer to his family networks and have the opportunity for his mental health to improve.