

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the first s 486O report on Mr X who has remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002203-O
Date of DIBP's reports	28 October 2015 and 24 April 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

25 October 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
10 April 2014	Transferred to Yongah Hill IDC.
7 August 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).
19 September 2015	Transferred to Christmas Island IDC.
8 April 2016	Transferred to Facility B.

Visa applications/case progression

9 August 2007	Mr X arrived in Australia on a Vocational Education and Training Sector (VETS) visa valid until 15 March 2010.
3 February 2010	Issued with Notice of Intention to Consider Cancellation of his VETS visa.
17 February 2010	Decision made not to cancel Mr X's VETS visa.
13 April 2010	Mr X was an unlawful non-citizen when he lodged a student visa application with an associated Bridging visa application. The same day he was granted an associated Bridging visa valid until 11 August 2010.
5 July 2010	Student visa application refused.
8 November 2010	Mr X was an unlawful non-citizen when he lodged a Protection visa application with an associated Bridging visa application. The same day he was granted an associated Bridging visa valid until 12 January 2011.
6 December 2010	The Department of Immigration and Citizenship (DIAC) determined the Protection visa application to be invalid.
20 December 2010	Lodged a Protection visa application with an associated Bridging visa application. The same day he was granted an associated Bridging visa valid until 28 February 2011.

19 January 2011	DIAC determined the Protection visa application to be invalid.
24 January 2011	Lodged a Protection visa application with an associated Bridging visa application. The same day he was granted an associated Bridging visa valid until 29 March 2011.
18 February 2011	DIAC determined the Protection visa application to be invalid.
25 February 2011	Lodged a Protection visa application with an associated Bridging visa application. The same day he was granted an associated Bridging visa valid until 17 October 2011.
28 April 2011	Protection visa application refused.
30 May 2011	Appealed to the Refugee Review Tribunal (RRT)
19 September 2011	RRT affirmed original decision.
18 October 2011 – 24 October 2013	Mr X remained in the community as an unlawful non-citizen.
2 May 2012	Mr X requested ministerial intervention under s 417. The same day DIAC initiated a ministerial intervention request under s 48B for consideration under the complementary protection criterion.
18 May 2012	Found not to meet the guidelines for referral to the former Minister under s 48B.
4 June 2012	Found not to meet the guidelines for referral to the former Minister under s 417.
19 July 2012	Mr X's case was referred on a ministerial submission for consideration under s 417.
8 March 2013	Consideration was delayed due to a change of Minister. The former Minister declined to consider ministerial intervention under s 417.
8 November 2013	Lodged a Protection visa application with an associated Bridging visa application.
19 November 2013	Mr X withdrew his associated Bridging visa application.
8 July 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information ¹ and advised that the privacy breach would be taken into account when considering his protection claims.
5 January 2015	Protection visa application refused.
9 January 2015	Appealed to the RRT.
13 March 2015	RRT affirmed original decision.
1 April 2015	Lodged a Bridging visa application, which was refused on 7 April 2015.

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.

8 April 2015	Appealed Bridging visa refusal to the Migration Review Tribunal (MRT). The same day Mr X requested judicial review of the RRT's decision by the Full Federal Court (FFC).
17 April 2015	MRT affirmed original decision.
10 September 2015	Lodged a Bridging visa application, which was refused on 14 September 2015.
16 September 2015	Appealed to the Administrative Appeals Tribunal (AAT). ²
28 September 2015	AAT affirmed original decision.
28 October 2015	DIBP advised that Mr X is a person of interest to the State Q Police.
24 November 2015	The FFC set aside the decision of the RRT and remitted Mr X's case to the AAT for reconsideration.
5 February 2016	Lodged a Bridging visa application, which was refused on 9 February 2016.
11 February 2016	Appealed to the AAT. The decision to refuse him a Bridging visa was affirmed on 19 February 2016.
1 March 2016	The AAT adjourned the hearing in relation to its reconsideration of DIBP's decision to refuse him a Protection visa.

Criminal history

5 November 2013	DIBP advised that Mr X was found guilty of shoplifting, fined \$200 and placed on a 12-month good behaviour bond.
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Health and welfare

15 July 2014	DIBP Incident Reports recorded that Mr X self-harmed by injuring his hand and advised that he would kill himself if he remained in detention.
June 2015	International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist and no mental health concerns were identified.
21 July 2015	A DIBP Incident Report recorded that Mr X was an alleged victim in an incident where several detainees and officers were assaulted during a major disturbance. Mr X informed an IHMS general practitioner (GP) that he had been kicked in the head and face by another detainee. The GP did not identify any significant injuries and Mr X was given pain relief medication.
22 July 2015	Mr X was reviewed by a GP after experiencing increasing pain in his jaw. An x-ray returned normal results and he was instructed to take pain relief medication as required.
29 August 2015	A DIBP Incident Report recorded that Mr X threatened self-harm.

² On 1 July 2015 the MRT and RRT merged with the AAT.

5 September 2015 – ongoing	<p>IHMS advised that Mr X was reviewed by a psychiatrist and reported detention fatigue, difficulties sleeping and low mood. He was diagnosed with acute stress reaction due to situational factors. The psychiatrist increased Mr X's medication and referred him for ongoing counselling.</p> <p>IHMS stated that Mr X was intermittently placed on Supportive Monitoring and Engagement (SME) observations when he required a greater level of support. This included occasions when he had threatened self-harm.</p>
18 September 2015 and 7 October 2015	DIBP Incident Reports recorded that Mr X was involved in incidents of self-harm.
21 September 2015	Reviewed by a GP following an alleged altercation with another detainee. He was diagnosed with musculoskeletal pain and advised this would subside with rest and pain relief medication.
22 September 2015	Mr X presented at a psychiatric review in an angry and upset state requesting that he be transferred from Christmas Island IDC to Wickham Point APOD. He threatened self-harm again if he was not moved.
6 October 2015	<p>During a consultation with a GP Mr X reported experiencing intermittent back pain for the previous three months following an altercation with other detainees. He was referred for physiotherapy.</p> <p>IHMS advised that Mr X remained on SME observations on an ongoing basis. However, he had advised the mental health team that he was feeling calmer and welcomed the ongoing mental health support.</p>
20 October 2015	Mr X developed a stutter after 'a significant assault to his person' (date of assault not provided) and was reviewed by a speech therapist. He also saw a neurologist who concluded that it was unlikely the stutter was the result of the assault. He was referred for further testing after he reported a deterioration of his short and medium term memory and was awaiting transfer to the mainland for this to occur.

Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in a number of behavioural incidents including participating in disturbances, instances of abusive or aggressive behaviour, intentional property damage and minor assault.	
21 July 2015	A DIBP Incident Report recorded that Mr X was one of a number of detainees at Yongah Hill IDC who were allegedly involved in a major disturbance in which they scaled fences to enter another compound and assault detention centre staff.

Other matters

23 July 2015	<p>Mr X lodged a complaint with the Ombudsman's office advising that he had been assaulted by 16 detainees at Yongah Hill IDC on 21 July 2015.</p> <p>DIBP confirmed that Mr X had been a victim of the disturbances on 21 July 2015, provided details of Mr X's level of care and advised that he was transferred to Wickham Point APOD on 7 August 2015. Mr X lodged a compensation claim with Serco for his belongings which he said had been stolen by his assailants.</p> <p>The complaint was finalised on 27 August 2015.</p>
7 November 2015	<p>Mr X lodged a complaint with the Ombudsman's office about his placement at Christmas Island IDC.</p> <p>In response to enquiries from the Ombudsman's office, the Australian Border Force (ABF) confirmed that it was required to move a number of detainees to Christmas Island IDC for capacity reasons. The Ombudsman's office informed Mr X of the ABF's advice and that it could not instruct the ABF to transfer him to another centre.</p> <p>The complaint was finalised on 19 February 2016.</p>

Case status

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 review by the AAT.