

## 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 42 months (three and a half years).

The first report 1001448 was tabled in Parliament on 24 September 2014 and the second report 1001798 was tabled in Parliament on 18 March 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>	1980
<b>Ombudsman ID</b>	1002251
<b>Date of DIBP's reports</b>	17 February 2015, 19 August 2015 and 14 February 2016
<b>Total days in detention</b>	1,458 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001798), Mr X has remained at Facility B.

### Recent visa applications/case progression

19 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information. <sup>1</sup>
26 August 2014	Mr X was re-referred to the Visa Applicant Character Consideration Unit for assessment under s 501 of the <i>Migration Act 1958</i> .
16 September 2014	DIBP issued Mr X a Notice of Intention to Consider Refusal (NOICR) of his Protection visa application under s 501.  The same day the former Minister declined to intervene under s 197AB to place Mr X in community detention.
27 November 2014	Mr X requested an extension of time to respond to the NOICR.
5 February 2015	DIBP wrote to Mr X to advise him of the recent changes to s 501 and gave him an opportunity to provide comments.
11 February 2015	Mr X provided a response to the NOICR.
22 May 2015	The Minister exercised his discretion under s 501 to refuse Mr X's Protection visa application.
29 June 2015	Requested judicial review by the Federal Court (FC).
16 September 2015	By consent the FC ordered that the Minister's decision to refuse the Protection visa application be quashed and that it be determined according to law.

<sup>1</sup> 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.

28 October 2015	Mr X's Protection visa application was again referred to the VACCU for consideration under s 501.
11 November 2015	DIBP issued Mr X a NOICR.
3 December 2015	Mr X responded to the NOICR.
14 February 2016	DIBP advised that following legislative amendment, Mr X is only eligible for a temporary visa and consideration to refuse Mr X's Protection visa application under s 501 remains ongoing.

### Health and welfare

29 June 2014	A DIBP Incident Report recorded that Mr X threatened self-harm during an interview relating to his Individual Management Plan. No further information was provided.
12 August 2014 – 7 April 2015	International Health and Medical Services (IHMS) reported that Mr X's mental state was stable and he attended regular counselling with the mental health team and a specialist counsellor. IHMS advised that he was reviewed by a psychiatrist every three months.
21 August 2014 – 23 December 2015	Attended regular specialist counselling sessions.
13 January 2015 – ongoing	Mr X's general practitioner (GP) referred him to a specialist for further assessment and management of his medical condition. IHMS advised that his condition is managed by the GP and Mr X was prescribed with medication.
9 March 2015	The GP assessed his blood test results and medication regime in relation to his medical condition.
3 August 2015 – ongoing	IHMS advised that Mr X was seeing a specialist counsellor and attended regular sessions. He also regularly interacted with the IHMS counsellor in relation to activities promoting mental health.
November 2015	At the latest review with the psychiatrist Mr X was found to be in a low mood with symptoms of depression and post-traumatic stress disorder.
9 November 2015	DIBP Incident Reports recorded that Mr X self-harmed by banging his head on a wall and table and that unplanned use of force was used to stop him self-harming.
27 November 2015	Prescribed with medication for a medical condition.
1 December 2015	A DIBP Incident Report recorded that Mr X threatened self-harm to an Australian Border Force officer.
4 December 2015	Prescribed with medication for insomnia.
15 January 2016	IHMS advised that Mr X has an appointment scheduled with a specialist for 19 January 2016.  IHMS further advised that Mr X was in regular contact with the IHMS psychiatrist in relation to his situational issues.

### **Ombudsman assessment/recommendation**

Mr X has been held in restricted immigration detention since his arrival in Australia on 17 February 2012. He has been found to be owed protection under the Refugee Convention.

On 26 November 2013 Mr X pleaded guilty to a charge of assault of a public official and received a three-month suspended prison sentence and a six-month good behaviour bond.

On 16 September 2015 the Federal Court ordered by consent that the Minister's decision to refuse Mr X's Protection visa application on character grounds be quashed.

The Ombudsman notes that on 28 October 2015 Mr X's Protection visa application was referred to consider refusal under s 501 and that Mr X responded to an NOICR on 15 December 2015.

Given that Mr X has now spent more than four years in restricted immigration detention the Ombudsman recommends that the consideration under s 501 be prioritised so that Mr X may receive a resolution to his uncertain immigration status.