

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).

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1978 |
| Ombudsman ID | 1002876 |
| Date of DIBP's reports | 1 April 2015 and 25 September 2015 |
| Total days in detention | 912 (at the date of DIBP's latest report). |

Detention history

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| 28 March 2013 | Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel 627 <i>Barracuda</i> . He was transferred to Northern Immigration Detention Centre (IDC). |
| 17 April 2013 | Transferred to Scherger IDC. |
| 25 January 2014 | Transferred to Curtin IDC. |
| 28 August 2014 | Transferred to Yongah Hill IDC. |
| 31 July 2015 | Transferred to Wickham Point Alternative Place of Detention (APOD). ¹ |

Visa applications/case progression

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| <p>The Department of Immigration and Border Protection (DIBP) advised that as Mr X arrived in Australia as a 'direct entry person'² he is not barred under s 46A from lodging a Protection visa application.</p> <p>DIBP further advised that following legislative amendment Mr X is only eligible for a temporary visa.</p> | |
| 12 March 2014 | Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through DIBP's website. ³ |
| 13 June 2014 | Lodged a Protection visa application with an associated Bridging visa application. |

¹ DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

² A maritime arrival to Australia's mainland who is seeking protection.

³ 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.

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| 13 October 2014 | Interview conducted in relation to Protection visa application. |
| 17 November 2014 | Associated Bridging visa application was considered invalid. |
| 18 November 2014 | Protection visa application refused. |
| 1 December 2014 | Appealed to the Refugee Review Tribunal (RRT). |
| 28 January 2015 | RRT affirmed original decision. |
| 17 February 2015 | Requested judicial review by the Federal Circuit Court (FCC). |
| 25 March 2015 | The Minister withdrew from proceedings and the case was remitted to the RRT. |
| 14 May 2015 | RRT affirmed original decision. |
| 17 June 2015 | Requested judicial review by the FCC. |
| 26 August 2015 | FCC affirmed original decision. |
| 25 September 2015 | DIBP advised that Mr X's case is affected by the judgment handed down by the Full Federal Court (FFC) ⁴ which found that the International Treaties Obligations Assessment process was procedurally unfair. DIBP further advised that it is in the process of seeking legal advice in relation to the judgment. |

Health and welfare

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| 18 April 2013 | International Health and Medical Services (IHMS) advised that Mr X presented with type 2 diabetes. His condition was initially managed through diet and he did not require medication. However, in March 2014 he was prescribed with medication. Mr X is regularly reviewed by a podiatrist and an optometrist and his condition is monitored by his general practitioner (GP). |
| 23 January 2014 | Reviewed by his GP following ongoing back pain. A computed tomography scan identified an abnormal spinal disc bulge. He was prescribed with pain relief medication and provided with back exercises. IHMS advised that he declined a referral for physiotherapy. |
| 12 June 2014 – 6 August 2014 | Attended three sessions of physiotherapy for treatment of back pain. |
| 18 September 2014 | Presented to his GP with ongoing pain in his right shoulder following a past injury. He was prescribed with pain relief medication and referred for an ultrasound. |
| 24 October 2014 | Mr X was diagnosed with depression. He attended specialist appointments with a psychologist and a psychiatrist and was prescribed with medication. IHMS advised that Mr X attends regular mental health screening and is monitored by his GP and the mental health team. |
| February 2015 | An ultrasound of his right shoulder identified joint stiffness. He was referred to an orthopaedic specialist for further investigation. |

⁴ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125

Other matters

DIBP advised that Mr X was identified as a person of interest following his alleged involvement in criminal activities whilst overseas. No further information was provided.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. DIBP advised that his case is affected by the FFC's decision of 2 September 2015 and it is considering the implications of the judgment.