

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 a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1975
Ombudsman ID	1002253-O
Date of DIBP's report	8 December 2015
Total days in detention	732 (at date of DIBP's report)

Detention history

22 July 2011	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 256 <i>Walton</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
31 July 2011	Transferred to Northern Immigration Detention Centre.
8 December 2011	Transferred to Darwin Airport Lodge APOD.
12 April 2012	Granted a Bridging visa with an associated Temporary Humanitarian Stay visa and released from detention.
28 August 2014	Mr X's Bridging visa ceased. He was re-detained under s 189(1) and transferred to Facility B.
29 August 2014	Transferred to Facility C.

Visa applications/case progression

18 November 2011	Protection Obligations Evaluation found he was not owed protection.
12 April 2012	The former Minister intervened under s 195A to grant Mr X a Bridging visa valid until 12 October 2012.
15 October 2012	Independent Protection Assessment found he was not owed protection.
15 October 2012 – 27 August 2014	Granted five consecutive Bridging visas during this time period.
28 August 2014	Mr X was re-detained.
8 December 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X has no outstanding matters before DIBP, the courts or tribunals and is on a removal pathway.

Health and welfare

23 July 2011 – ongoing	International Health and Medical Services (IHMS) advised that during his induction health assessment Mr X reported to have been born with significant scoliosis of the spine, causing him chronic back pain. He advised that he had previously attended regular physiotherapy and swimming sessions to control his pain. He was referred for physiotherapy and scans which confirmed the diagnosis.
14 October 2011	He reported to IHMS that he felt depressed and mentally and physically tired. He was provided with regular psychological treatment sessions.
5 January 2012 – 29 December 2014	Attended regular physiotherapy appointments. On 29 December 2014 the physiotherapist reported that he did not require further treatment.
16 March 2012	A DIBP Incident Report recorded that Mr X was placed on Psychological Support Program observations after presenting to IHMS with suicidal ideation.
21 March 2012	Assessed by a psychologist who noted that he had been bullied about his disability throughout his childhood, causing emotional trauma. Mr X was diagnosed with adjustment disorder and depression which were said to be aggravated by his detention and chronic back pain and prescribed with antidepressants.
November 2014	He reported that he was experiencing anxiety, depression, hopelessness and thoughts of self-harm after being re-detained. He attended sessions with a psychologist and was assessed to be at low risk of self-harm.
19 January 2015	A DIBP Incident Report recorded that Mr X stated he was refusing food and fluid as a form of protest at his ongoing detention. IHMS advised that Mr X engaged in voluntary starvation between January and February 2015 after being told by his case manager that his only options were to return to Country A or remain in detention indefinitely. IHMS further advised that he was monitored on a daily basis.
March 2015	IHMS advised that his back pain returned after he slipped and landed on his back. He was referred for further physiotherapy and prescribed with pain relief medication.
9 April 2015 – 16 June 2015	Attended six physiotherapy appointments.
31 July 2015	He presented with groin pain. Investigative tests and scans identified no abnormalities.
18 August 2015 – ongoing	Referred for a sinus x-ray after complaining of a blocked nose and difficulty breathing. The x-ray identified a deviated septum which was confirmed by a computed tomography scan. Mr X was prescribed with nasal spray and referred to an ear, nose and throat specialist. An appointment was outstanding.

9 November 2015	Reviewed by a general practitioner (GP) for his previously reported groin pain which Mr X advised had lessened. The GP advised him to perform regular self-examinations and return for an ultrasound in one year.
13 November 2015	IHMS reiterated that Mr X's adjustment disorder and depression are aggravated by being in detention and noted that he had engaged in voluntary starvation because of his current situation.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He has no outstanding matters before DIBP, the courts or tribunals and is on a removal pathway.

However, the Ombudsman notes that Mr X's removal is likely to be protracted as involuntary removal to Country A is not possible at present. The Ombudsman further notes with concern that in the absence of any conclusive legal or policy advice to change DIBP's current policy position and practice people who do not wish to voluntarily return to their country of origin appear likely to remain in a form of immigration detention for an indefinite period.

In light of this information and Mr X's ongoing mental health concerns the Ombudsman recommends that consideration be given to granting Mr X a Bridging visa.