

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Mr X who has remained in immigration detention for a cumulative period of more than 48 months (four years).

The first report 1001019 was tabled in Parliament on 11 December 2013, the second report 1001434 was tabled in Parliament on 27 August 2014 and the third report 1001749 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.

Name	Mr X
Citizenship	Country A
Year of birth	1962
Ombudsman ID	1002388
Date of DIBP's reports	16 April 2015, 2 October 2015 and 29 March 2016
Total days in detention	1819 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001749), Mr X has remained at Villawood Immigration Detention Centre (IDC).

Recent visa applications/case progression

Since the Ombudsman's previous report the Department of Immigration and Border Protection (DIBP) has provided further information about the circumstances leading up to Mr X being released from detention on 26 September 2014 and the reason why he was re-detained on 3 December 2014.

12 August 2014	Mr X filed a show cause application with the High Court (HC) in relation to the notification of the refusal of his application for a Country A (Permanent) entry permit.
15 August 2014	The Refugee Review Tribunal (RRT) affirmed the decision to refuse Mr X's Protection visa application.
19 September 2014	Mr X requested judicial review of the RRT's decision by the Federal Circuit Court (FCC). On 6 August 2015 he withdrew the request.
26 September 2014	DIBP determined that the notification of the decision to refuse Mr X's Country A (Permanent) entry permit on 25 October 1996 was not legally effective because it did not correctly inform Mr X of the time he had to apply for a review of the refusal decision. Consequently DIBP deemed that Mr X was still the holder of a Country A (Temporary) visa, which had previously been granted to Mr X on 1 July 1994, pending the decision of his Country A (Permanent) entry permit application. Mr X was released from immigration detention as a lawful non-citizen.
30 September 2014	The HC dismissed Mr X's show cause application on the basis that he had already been released from immigration detention.

3 December 2014	DIBP re-notified Mr X of its decision to refuse his Country A (Permanent) entry permit on character related grounds under s 501 of the <i>Migration Act 1958</i> . Mr X's Country A (Temporary) visa ceased at the time of the refusal notification and he was re-detained under s 189.
10 December 2014	Appealed to the Administrative Appeals Tribunal (AAT) in relation to DIBP's decision to refuse his Country A (Permanent) entry permit application. This matter remains ongoing.
18 December 2014	Lodged an application for a Bridging visa.
22 December 2014	Bridging visa application was found to be invalid as a result of Mr X's previous visa application refusal under s 501.
6 March 2015	DIBP advised Mr X that the re-notification of its decision to refuse his Country A (Permanent) entry permit was also defective because it had incorrectly informed him that he only had nine days after the day on which he was notified to seek merits review. On the same day, DIBP re-notified Mr X of the decision to refuse his Country A (Permanent) entry permit application.
19 March 2015	Mr X appealed a second time to the AAT about DIBP's decision to refuse his Country A (Permanent) entry permit application a second time. DIBP advised that this application was being considered in conjunction with the AAT application made on 10 December 2014. This matter remains ongoing.
16 April 2015	DIBP advised that Mr X was unlawfully detained from 29 February 2012 to 26 September 2014. DIBP also advised that it continues to consider Mr X's response to its invitation to comment on the unintentional release of personal information through DIBP's website. ¹
15 September 2015	Found not to meet the guidelines for referral to the Minister for consideration under ss 195A and 197AB.
23 September 2015	Mr X lodged a claim against the Commonwealth of Australia in the Federal Court (FC), claiming damages for personal injury, unlawful arrest and false imprisonment arising from his detention at Villawood IDC. DIBP advised that the matter was expected to go to mediation, however, a directions hearing was scheduled for 24 May 2016.
19 October 2015	Referred on a first stage submission for the Minister to indicate whether he would be inclined to consider ministerial intervention under s 195A for the grant of a Bridging visa.
11 November 2015	The Minister declined to intervene in Mr X's case.
22 – 25 February 2016	Attended a hearing in relation to his AAT matter. A further hearing was scheduled for 18 April 2016.

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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X underwent investigations and received treatment for multiple health conditions including urinary issues, bleeding gums and a skin lesion. In September 2015 he presented with a persistent cough and shortness of breath and investigations identified inflammation in the lungs. Mr X was referred to the pneumatology clinic for further assessment. He was awaiting allocation of an appointment at the date of IHMS's latest report.

In February 2016 Mr X presented to the mental health team (MHT) with concerns about his deteriorating mental health. He advised that he felt scared and angry, was talking to himself and was unable to sleep. IHMS recorded that Mr X appeared to be thought disordered and unkempt. He is monitored by the MHT as necessary.

Other matters

December 2015	The Australian Human Rights Commission finalised a report into the complaint made by Mr X against DIBP. The report was tabled in Parliament on 29 February 2016.
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Ombudsman assessment

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 matters in the AAT and FC.

The Ombudsman notes with concern that Mr X was twice detained unlawfully in restricted immigration detention. The first time was from 19 December 2004 to 6 May 2005 and the second time was from 29 February 2012 to 26 September 2014.

The Ombudsman further notes that DIBP advised that it had incorrectly informed Mr X that he only had nine days after the day on which he was notified to seek merits review of DIBP's decision to refuse Mr X's Country A entry permit.