

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 and Mr Y who have remained in restricted immigration detention for more than 24 months (two years).

Name	Mr X (and son)
Citizenship	Country A
Year of birth	1952

Family details

Family members	Mr Y (son)
Citizenship	Country A
Year of birth	1991

Ombudsman ID	1003190
Date of DIBP's report	11 August 2015
Total days in detention	735 (at date of DIBP's report)

Detention history

4 May 2008	Mr X and Mr Y arrived in Australia as the holders of a Student Guardian visa and School Sector visa.
1 August 2009	Mr X's Student Guardian visa expired and he remained unlawfully in the community.
16 March 2011	Mr Y's School Sector visa expired and he remained unlawfully in the community.
6 August 2013	Mr X and Mr Y were located by the Department of Immigration and Citizenship. They were detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Villawood Immigration Detention Centre.
8 April 2014	Transferred to Wickham Point Alternative Place of Detention (APOD). ¹

Visa applications/case progression

27 August 2013	Lodged a Protection visa application with an associated Bridging visa application.
29 August 2013	Bridging visa application refused.
16 September 2013	Protection visa application refused.

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 and Mr Y are accommodated in the single adult male compound at Wickham Point APOD.

19 September 2013	Appealed to the Refugee Review Tribunal (RRT).
30 September 2013	Lodged a second Bridging visa application.
2 October 2013	Bridging visa application refused.
March 2014	Mr X and Mr Y were issued with a letter inviting them to comment on the unintentional release of personal information through the Department of Immigration and Border protection's (DIBP) website. ²
29 May 2014	RRT affirmed original decision.
2 June 2014	Found not to meet the guidelines for a referral to the former Minister under s 417.
24 June 2014	Requested ministerial intervention under ss 417 and 48B.
18 September 2014	Found not to meet the guidelines for a referral to the former Minister under s 48B.
1 October 2014	DIBP invited Mr X and Mr Y to provide information in relation to the privacy breach.
8 October 2014	Mr X and Mr Y provided their response to DIBP in relation to its unintentional release of personal information.
18 October 2014	The former Minister declined to intervene under s 417.
15 January 2015	Mr X and Mr Y were issued with a letter notifying them of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of their case engage Australia's <i>non-refoulement</i> obligations.
24 March 2015	DIBP invited Mr X and Mr Y to provide further information in relation to the ITOA.
13 April 2015	Found not to be owed protection.
20 April 2015	Requested judicial review of the negative ITOA by the Federal Circuit Court. Mr X and Mr Y's hearing was scheduled for 25 August 2015.

Health and welfare

Mr X

9 October 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X was diagnosed with type 2 diabetes following pathology testing. He was prescribed with medication and provided with education.
6 February 2014	IHMS advised that Mr X reported ongoing back pain related to a previous fracture injury. He was referred for physiotherapy.
27 February 2014 – 3 April 2014	Attended six physiotherapy sessions.

² 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.

24 April 2014 – ongoing	Mr X was diagnosed with hepatitis B following pathology testing. A liver ultrasound identified no abnormalities. He was referred to a liver clinic for further investigation.
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Mr Y

2 September 2013 – ongoing	Mr Y was confirmed as hepatitis B positive following routine pathology. Mr Y advised that he had been previously diagnosed but had not received treatment at that time. An ultrasound identified no abnormalities and he was referred to a gastroenterology specialist for further investigation.
5 May 2014	Presented to a general practitioner (GP) following ongoing chest pain. An echocardiography and pathology testing identified no cardiac abnormalities.
14 May 2014	Reviewed by his GP and referred to a cardiologist for further investigation.

Case status

Mr X and Mr Y have been found not to be owed protection under the Refugee Convention and the complementary protection criterion. They are awaiting the outcome of judicial review.
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