

**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 36 months (three years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986
<b>Ombudsman ID</b>	1002455
<b>Date of DIBP's reports</b>	29 April 2015, 21 October 2015 and 20 April 2016
<b>Total days in detention</b>	1094 (at date of DIBP's latest report)

**Detention history**

22 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after overstaying his visa. He was transferred to Perth Immigration Detention Centre (IDC).
3 December 2013	Transferred to Yongah Hill IDC.

**Visa applications/case progression**

10 July 2006	Mr X arrived in Australia on a Higher Education Sector (HES) visa valid until 30 July 2010.
4 August 2009	Mr X's HES visa was cancelled under s 116 as he breached his visa condition which required him to remain enrolled and achieve satisfactory course attendance and progress.  The Department of Immigration and Border Protection (DIBP) advised that he was twice granted Bridging visas (no dates provided) and the second Bridging visa was valid until 7 October 2010.
11 August 2009	Appealed to the Migration Review Tribunal (MRT).
31 August 2009	MRT affirmed the decision.
7 October 2010 – 22 April 2013	Mr X remained unlawfully in the community until he was located by DIBP and was detained.
1 May 2013	Lodged a Protection visa application.
1 May 2013 – 25 September 2014	Lodged four Bridging visa applications during this period, all of which were refused.
4 December 2013	Protection visa application refused.
10 December 2013	Appealed to the Refugee Review Tribunal (RRT).
4 June 2014	RRT affirmed the decision.
20 June 2014	Assessed not to meet the guidelines for possible referral for ministerial intervention under s 417.

8 July 2014	Requested judicial review by the Federal Circuit Court (FCC) of the RRT decision.
17 December 2014	DIBP issued Mr X with a letter inviting him to comment on the unintentional release of personal information. <sup>1</sup>
24 December 2014	Mr X provided a response concerning the privacy breach. DIBP advised that an International Treaties Obligations Assessment (ITOA) would commence once Mr X's judicial review was finalised.
2 July 2015	FCC reserved judgment of Mr X's application for judicial review.
16 July 2015	Lodged an application for a Bridging visa, which was refused.
21 July 2015	Appealed to the Administrative Appeals Tribunal (AAT). <sup>2</sup>
30 July 2015	AAT affirmed DIBP's decision.
20 April 2016	DIBP advised that Mr X's judicial review application before the FCC remained ongoing.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was provided with treatment and counselling for insomnia and frustration associated with prolonged detention, and was diagnosed with a major depressive disorder.

IHMS reported that since 24 September 2015 Mr X had not presented with any chronic or major mental health issues and following an assessment by the mental health team (MHT) in January 2016 his mental health issues were considered resolved. IHMS advised that Mr X was aware of the self-referral process to the MHT if needed.

### Detention incidents

8 June 2015	Mr X allegedly physically assaulted two detainees and his case was referred to the Australian Federal Police (AFP) for investigation. DIBP advised that the two complainants were removed from Australia and the AFP closed the investigation in September 2015.
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### Other matters

21 October 2015	DIBP advised that Mr X was identified as a person of interest to DIBP in relation to his alleged criminal matters while in Australia.
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<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.

<sup>2</sup> On 1 July 2015 the MRT and RRT were merged into the AAT.

**Information provided by Mr X**

During an interview with Ombudsman staff at Yongah Hill IDC on 1 September 2015 Mr X advised that he had been detained because he had been working when he did not have work rights attached to his visa.

Mr X said that DIBP told him he will have to return to Country A and he advised that he will not go voluntarily. He said he has friends living in Perth who are willing to support him if he is released from detention. He would like to be transferred to Perth IDC so that his friends can visit him more frequently than they are able to while he is located at Yongah Hill IDC.

Mr X stated that he has no health concerns and has no concerns about his detention conditions at Yongah Hill IDC.

**Case status**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. At the time of DIBP's latest review Mr X was awaiting the outcome of judicial review.