

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A (born in Country B)
<b>Year of birth</b>	1990
<b>Ombudsman ID</b>	1002315
<b>Date of DIBP's reports</b>	11 March 2015 and 14 September 2015
<b>Total days in detention</b>	917 (at date of DIBP's latest report)

### Detention history

8 June 2012	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Australia as an irregular air arrival and being refused immigration clearance. He was transferred to Facility C.
21 January 2014	Transferred to a hospital designated as an Alternative Place of Detention.
26 January 2014	Absconded from hospital while being held in immigration detention.
29 October 2014	Located in a targeted search, re-detained under s 189(1) and transferred to Facility C.

### Visa applications/case progression

28 June 2012	Mr X lodged a Protection visa application.
29 June 2012	Lodged an associated Bridging visa application under s 195A.
2 July 2012	Bridging visa application found to be invalid.
1 August 2012	Protection visa application refused.
3 August 2012	Appealed to the Refugee Review Tribunal (RRT).
28 November 2012	RRT affirmed original decision.
6 December 2012	Requested judicial review by the Federal Magistrates Court (FMC).
19 December 2012 and 17 January 2013	Lodged Bridging visa applications.
20 December 2012 and 18 January 2013	Bridging visa applications found to be invalid.
8 March 2013	The Department of Immigration and Citizenship initiated a request for a Bridging visa under s 195A or community detention under s 197AB.
20 June 2013	The Federal Circuit Court (previously the FMC) dismissed Mr X's application for judicial review.

1 July 2013	Appealed the decision of the FCC to the Federal Court (FC).
26 July 2013	Assessed as meeting the guidelines for referral to the former Minister under s 195A. Assessed as not meeting the guidelines for referral under s 197AB.
21 November 2013	Appeal to the FC was dismissed.
18 December 2013	Mr X was referred for removal action to commence. He sought leave from the High Court (HC) to appeal the decision of the FC.
19 December 2013	Decision made not to refer the s 195A request for a Bridging visa to the former Minister.
26 January 2014	Absconded from immigration detention.
14 March 2014	Country A issued a <i>laissez-passer</i> travel document for Mr X, valid until 13 June 2014.
13 May 2014	The HC refused Mr X's application for special leave to appeal the decision of the FC.
29 October 2014	He was re-detained.
13 November 2014	He was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. <sup>1</sup>
14 November 2014	He provided his response and DIBP has advised that the matter remains ongoing.
13 January 2015	DIBP advised Mr X that it would reassess his protection claims as part of a new International Treaties Obligations Assessment (ITOA) which would assess whether there were any <i>non-refoulement</i> obligations preventing DIBP from progressing removal arrangements.
2 and 3 February 2015	He provided responses to DIBP in relation to the ITOA.
27 March 2015	DIBP invited Mr X to comment on country and other information relevant to the ITOA.
14 April 2015	He lodged an application for a Combined Partner visa which triggered an associated Bridging visa application.
20 April 2015	The associated Bridging visa application was deemed invalid and the processing of the Combined Partner application remained ongoing.
22 April 2015	He provided a response to DIBP.
11 May 2015	The ITOA was finalised and DIBP found that his case does not engage Australia's <i>non-refoulement</i> obligations.
18 June 2015	He applied to the HC seeking review of the ITOA decision.
24 August 2015	He lodged an application for a Bridging visa. He was notified on 26 August 2015 that this application was invalid.

<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.

## Health and welfare

25 November 2013	A DIBP Incident Report recorded that Mr X was escorted by ambulance to hospital for assessment and treatment.
6 January 2014	A DIBP Incident Report recorded that Mr X threatened self-harm and commenced food and fluids refusal. International Health and Medical Services (IHMS) advised Serco that he needed to go offsite for a medical assessment by the ambulance service.
5 November 2014	Mr X presented to a general practitioner (GP) with chest discomfort. The GP diagnosed a condition involving inflammation of the rib junctions and prescribed Mr X with pain relief medication.  Mr X also presented with shoulder pain and he was referred for physiotherapy.
22 December 2014	Attended physiotherapy assessment.
13 February 2015 - ongoing	Presented with dental pain. He underwent assessment and was referred for dental treatment.
18 March 2015	Attended appointment for dental treatment. A further appointment was scheduled for 15 April 2015.
19 August 2015	He did not attend a scheduled dental appointment for bleeding gums. IHMS advised that he was aware of the self-referral process.

## Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in several minor incidents including disturbances, assaults and an instance of abusive/aggressive behaviour.

## Other matters

29 October 2014	Mr X's Australian citizen son was born. Mr X was re-detained the same day.
18 February 2015	Mr X married Ms Y, an Australian citizen and mother of his son.
On 2 December 2014 a complaint was made on Mr X's behalf to the Ombudsman's office. He was concerned because his personal circumstances had been the subject of media reporting.  On 4 December 2014 the complainant was referred to the Office of the Australian Information Commissioner which has specific jurisdiction over privacy matters.	

### **Information provided by Mr X**

During an interview with Ombudsman staff on 18 June 2015 at Facility C Mr X advised that he had lodged an application for a spouse visa around three months ago and this was still being processed. He stated that he also had a case in the HC in relation to the data breach.

He said his physical health was good and he spends time in the gym. However, he indicated his mental health was extremely poor. He advised that when he went to the medical centre he was handcuffed which made him feel like a criminal, so even if he felt extremely unwell he would not feel like going there. He said he was reluctant to take medication and had spent time in two psychiatric hospitals.

Mr X said that six months ago his wife had been banned from visiting him, and the ban appeared to be of unlimited duration. He also said his request for an escorted home visit to see his baby son had been refused.

### **Ombudsman assessment/recommendation**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting judicial review of the ITOA decision and is also awaiting the outcome of his Combined Partner visa application.

The Ombudsman notes that Mr X's wife is not allowed to visit him at Facility C and he is not permitted escorted visits to see her and his son.

Since Mr X's wife is no longer employed with Q, the Ombudsman recommends that, in the interests of their child and family cohesion, Mr X's wife and child be allowed to visit him at Facility C. If this is not possible due to the conditions under which Ms Y lost her job, the Ombudsman recommends that arrangements be made for escorted home visits.