

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

*Under s 486O of the Migration Act 1958*

This is fourth s 486O report on Mr X who has remained in restricted immigration detention for more than 66 months (five and a half years).

The first report 853/12 was tabled in Parliament on 19 September 2012, the second report 1001100 was tabled in Parliament on 11 December 2013 and the third report 1001433 was tabled in Parliament on 22 October 2014. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1992
<b>Ombudsman ID</b>	1002219
<b>Date of DIBP's reports</b>	27 January 2015 and 29 July 2015
<b>Total days in detention</b>	2,008 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001433), Mr X has remained at Villawood Immigration Detention Centre (IDC).

### Recent visa applications/case progression

21 July 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection (DIBP) website. <sup>1</sup> He responded to DIBP the same day.
2 September 2014	He provided a further response to DIBP.
26 September 2014	Mr X was issued with a letter notifying him of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.  DIBP advised that the ITOA was put on hold pending the outcome of Mr X's appeal to the Federal Circuit Court (FCC). Mr X previously sought judicial review of the Refugee Review Tribunal's decision of 19 May 2014 to affirm DIBP's decision to refuse his application for a Protection visa.
17 October 2014	FCC dismissed his appeal.
7 November 2014	Appealed the FCC's decision to the Federal Court (FC).
11 November 2014	Attended a directions hearing.
2 December 2014	Lodged an application for a Bridging visa.

<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.

22 December 2014	Bridging visa found to be invalid.
27 January 2015	DIBP initiated a ministerial intervention request under s 195A of the <i>Migration Act 1958</i> .
13 March 2015	FC dismissed Mr X's appeal.
30 March 2015	DIBP assessed Mr X's case as meeting the guidelines for referral to the Minister under ss 195A and 197AB. DIBP advised that it is in the process of preparing a submission to the Minister.
1 May 2015	Provided further information to DIBP in relation to the ITOA.
7 May 2015	Requested ministerial intervention under s 417.
18 May 2015	Found not to meet the guidelines for referral to the Minister. However, DIBP advised that his request will be referred to the Minister on a schedule as it is Mr X's first request for ministerial intervention under s 417.

### Health and welfare

24 October 2014	<p>Attended a psychiatric review. The psychiatrist noted that Mr X's adjustment disorder was now in the severe range and was developing into a major mood disorder. The psychiatrist recommended placement in community detention advising that his best course of treatment would be an opportunity to live in freedom.</p> <p>International Health and Medical Services (IHMS) advised that Mr X continued to see the counsellor for support and to express his feelings of disappointment, sadness and hopelessness. He has told IHMS that he does not have any thoughts of self-harm or causing harm to others and has consistently declined to take any medication to assist with his mood.</p>
26 May 2015	Attended a specialist counselling session.
3 June 2015	Attended an appointment with a surgeon in relation to dental pain. IHMS advised that he had a follow up appointment scheduled for 17 August 2015.

### **Ombudsman assessment/recommendation**

Mr X arrived in Australia on 28 January 2010 as an irregular air arrival with no identity documents. He has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Since August 2012 the Ombudsman has recommended that consideration be given to transferring Mr X to a less restrictive environment. The Ombudsman notes with serious concern that Mr X has remained in restricted detention facilities for over five and a half years, and despite DIBP's attempts to establish Mr X's identity and nationality, there appears to be no clear resolution in sight.

The Ombudsman remains concerned about the effect of protracted detention on Mr X's health. The Ombudsman notes that Mr X attended a psychiatric review on 24 October 2014. This identified a significant deterioration in his mental health and a recommendation that Mr X be placed in community detention. It is not clear if Mr X has attended any further psychiatric reviews since October 2014.

The Ombudsman recommends that DIBP arrange a psychiatric review for Mr X if one has not been completed within the last six months.

The Ombudsman further recommends that all outstanding ministerial intervention requests and the ITOA, which was commenced over 12 months ago, be expedited in order to finalise Mr X's immigration status. Should the above processes be further protracted, the Ombudsman again recommends that the Minister consider transferring Mr X to lower-security accommodation.