

## 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 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1989
<b>Ombudsman ID</b>	1002406
<b>Date of DIBP's reports</b>	1 May 2015 <sup>1</sup> and 6 October 2015
<b>Total days in detention</b>	911 (at date of DIBP's latest report)

### Detention history

8 April 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australian mainland aboard Suspected Illegal Entry Vessel 640 <i>Outback</i> . He was transferred to Northern Immigration Detention Centre (IDC).
1 May 2013	Transferred to Scherger IDC.
2 July 2013	Transferred to Yongah Hill IDC.
27 January 2014	Transferred to Christmas Island IDC.
5 June 2014	Transferred to Wickham Point IDC.
8 June 2014	Transferred to Yongah Hill IDC.
10 July 2014	Transferred to Wickham Point IDC.
16 July 2014	Transferred to Christmas Island IDC.
8 April 2015	Transferred to Perth IDC.
10 July 2015	Transferred to Christmas Island IDC.

### Visa applications/case progression

1 July 2014	Lodged a Protection visa application. The Department of Immigration and Border Protection (DIBP) advised that as Mr X arrived in Australia as a 'direct entry person' <sup>2</sup> he was not barred under s 46A from lodging a Protection visa application.  DIBP further advised that following legislative amendment, Mr X is only eligible for a temporary visa.
11 December 2014	Mr X requested voluntary removal from Australia.
16 December 2014	Found not to be owed protection.

<sup>1</sup> The 24 month s 486N review for Mr X dated 17 April 2015 was provided in a schedule format with advice that a full review would be provided by 15 May 2015. The full review dated 1 May 2015 was provided on 20 May 2015.

<sup>2</sup> A maritime arrival to Australia's mainland who is seeking protection.

20 December 2014	Mr X withdrew his request for removal.
24 December 2014	Appealed to the Refugee Review Tribunal (RRT).
8 April 2015	Attended a hearing with the RRT. This matter remained outstanding at the time of DIBP's latest report.

### **Criminal matters**

5 September 2014	DIBP advised that Mr X was allegedly involved in a disturbance between Country A and Country B detainees at Christmas Island IDC.
1 December 2014	He was served with a prosecution notice to attend court in relation to the charge of participating in a riot.
12 May 2015	Mr X attended the Q Magistrates Court. His hearing was adjourned to 13 October 2015.

### **Health and welfare**

9 April 2013	International Health and Medical Services (IHMS) advised that Mr X disclosed a history of torture and trauma but declined specialist counselling. However, he agreed to see a psychologist in relation to family and situational issues.
21 April 2013	He advised he had a history of abdominal discomfort and was referred for a gastroscopy for further investigation.
20 December 2013 – 31 December 2013	He threatened self-harm after receiving negative news. He was placed on Psychological Support Program observations and undertook cognitive behavioural therapy with a psychologist and the mental health team.
13 April 2014 – 11 May 2015	Received physiotherapy on five occasions for an ankle ligament injury.
2 May 2014	A DIBP Incident Report recorded that Mr X alleged that he had been assaulted by detainees and the nature of his injuries appeared to support his allegations. No further information was provided.
June 2014	Gastroscopy results identified stomach inflammation and he was prescribed with medication.
July 2014	Reported a history of middle ear infections with decreased hearing. An ear, nose and throat specialist identified a perforated ear drum and he was placed on a surgical waiting list.
December 2014	Mr X reported to the psychiatrist that he was non-compliant with his prescribed antidepressant medication but agreed to trial sedative medication.
April 2015	Prescribed with further medication to resolve stomach inflammation.
May 2015	Referred for an x-ray following elbow pain.  Mr X also reported ongoing abdominal pain and his medication was adjusted. He was referred for further testing to determine if additional treatment was required.

13 May 2015	Prescribed with antidepressant medication following depressive symptoms.
18 May 2015 – 18 June 2015	Received physiotherapy on five occasions for an ankle ligament injury.
June 2015	Pathology tests identified an ongoing resistant stomach infection.
10 July 2015	A DIBP Incident Report recorded that Mr X allegedly threatened self-harm. No further information was provided.
18 August 2015	Further tests were conducted which confirmed that Mr X's stomach inflammation was resolved. IHMS reported that he continued to take medication to reduce gastric irritation.
12 September 2015	IHMS reported that Mr X has ongoing symptoms associated with his prolonged detention and continued to attend group therapy classes.

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

During telephone conversations with Ombudsman staff on 2 and 7 October 2015 Mr X advised that he is awaiting the outcome of his appeal to the RRT. He also said that he has been informed by DIBP that his immigration case will not be progressed until his criminal matters are finalised.

Mr X stated that he is concerned for his safety due to certain detainee cohorts located at Christmas Island IDC and only participates in activities that are conducted indoors. He advised that 'bad things' happen on the sporting fields.

He advised that he is stressed, depressed and cannot eat or sleep properly. However, he recently ceased taking prescribed medication for his mental health as he felt that it was ineffective. He said that he is deaf in his left ear and recently saw a specialist in City Q who placed him on a waiting list for corrective surgery.

Mr X said that he has no family or friends in Australia but has an advocate who is assisting him with his immigration case. She is also trying to facilitate legal representation on his behalf in relation to his criminal matters.

### **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 the outcome of his appeal to the RRT.

The Ombudsman notes with concern the information provided by Mr X in relation to the impact of the increased co-location at Christmas Island IDC of different groups of detainees.

In light of reports of unrest in November 2015, the Ombudsman recommends that the placement of detainee cohorts is reviewed as a matter of priority to ensure the safety of all detainees and staff at Christmas Island IDC.