

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

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X who has remained in restricted immigration detention for more than 42 months (three and a half years).

The first report 1002383 was tabled in Parliament on 10 February 2016. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1990
<b>Ombudsman ID</b>	1001292-O
<b>Date of DIBP's reports</b>	25 March 2016 and 24 September 2016
<b>Total days in detention</b>	1276 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002383), Mr X remained at Facility F.	
16 June 2016	Transferred to Facility G.
The Department of Immigration and Border Protection (DIBP) advised that Mr X's partner, Mr Y, is the subject of Ombudsman report 1001775-O.	

### Recent visa applications/case progression

9 October 2015	The Administrative Appeals Tribunal (AAT) <sup>1</sup> affirmed the original decision to refuse Mr X's Temporary Protection visa application.
12 November 2015	Requested judicial review by the Federal Circuit Court (FCC).
1 February 2016	Mr X's case was referred on a first stage ministerial submission under s 195A of the <i>Migration Act 1958</i> for the grant of a Bridging visa. On 4 March 2016 the Minister declined to intervene.
2 June 2016	The FCC heard Mr X's application and reserved judgment.
24 September 2016	DIBP advised that it was assessing whether Mr X's case meets the guidelines for referral to the Minister under s 195A.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X presented with anxiety and low mood and reported that he continues to experience bullying and isolation in restricted detention. He attended psychological counselling and was provided with education and psychotherapy to reduce his symptoms. He continues to be monitored by IHMS and was referred for specialist torture and trauma counselling.</p> <p>IHMS further advised that Mr X received treatment for physical health concerns, including a nerve impingement. He continues to be monitored by his general practitioner.</p>
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<sup>1</sup> On 1 July 2015 the Migration Review Tribunal and Refugee Review Tribunal were merged into the AAT.

15 December 2015	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
2 – 5 January 2016	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
7 January 2016	A DIBP Incident Report recorded that Mr X threatened self-harm.

**Recent detention incidents**

31 December 2015	A DIBP Incident Report recorded that Mr X alleged that he was sexually assaulted by another detainee at Facility F. The incident was referred to the police and Mr X was placed in alternative accommodation.
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**Other matters**

25 March 2016	DIBP advised that Mr X had been of interest in relation to claims he had been accused of murder in Country A and had provided DIBP with a police clearance, however, the authenticity of the document could not be confirmed and the matter was closed.
15 July 2016	DIBP was notified that Mr X had lodged a complaint with the Australian Human Right’s Commission (AHRC). On 16 August 2016 DIBP provided its response and on 31 August 2016 the AHRC requested further information.

**Ombudsman assessment/recommendation**

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.

On 24 September 2016 DIBP advised that it was assessing whether Mr X’s case meets the guidelines for referral to the Minister under s 195A.

The Ombudsman notes with the concern the reported impact restricted detention is having on Mr X’s mental health and the bullying and isolation he continues to experience. In light of these concerns, the Ombudsman recommends that DIBP expedite the assessment of Mr X’s case against the guidelines under s 195A.

The Ombudsman further recommends that if Mr X’s case is found not to meet the guidelines under s 195A, that consideration be given to placing Mr X in a less restrictive detention environment.