

**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 immigration detention for a cumulative period of more than 42 months (three and a half years).

The first report 1001891 was tabled in Parliament on 17 June 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1002411
Date of DIBP's reports	17 April 2015, 7 October 2015 and 7 April 2016
Total days in detention	1256 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001891), Mr X remained at Facility C. ¹	
2 September 2014	Transferred to Facility B.
17 June 2015	Transferred to Facility C

Recent visa applications/case progression

20 December 2014	Requested judicial review by the Federal Circuit Court (FCC) of his negative Independent Merits Review (IMR).
13 March 2015	The FCC dismissed Mr X's application for judicial review.
2 April 2015	Requested judicial review by the Full Federal Court (FFC).
11 June 2015	The FFC issued orders that the IMR of 23 August 2012 was affected by a legal error. ²
16 June 2015	DIBP notified Mr X that it would reconsider his protection claims.
20 July 2015	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a Bridging visa.
27 July 2015	Mr X attended an interview in relation to his protection claims.
17 August 2015	The Minister declined to intervene under s 195A.
17 September 2015	Found not to be owed protection.
22 February 2016	Requested judicial review by the FCC. The matter was scheduled to be heard on 20 June 2016.

¹ The Department of Immigration and Border Protection's (DIBP) 24-month review dated 29 October 2014 incorrectly recorded that Mr X was transferred to Facility B on 27 August 2014.

² *DZAFF v Minister for Immigration and Border Protection* [2015] FCA 569.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X suffers from significant mental health issues. At his induction health assessment he disclosed a history of torture and trauma, depression, anxiety and self-harm. He is also noted to have a long history of opioid dependency and drug seeking behaviour.

Mr X has since been diagnosed with major depressive disorder, severe personality disorder with complex post-traumatic stress disorder and was assessed to be at high risk of suicide. DIBP Incident Reports recorded that Mr X self-harmed and threatened self-harm on numerous occasions including two intentional drug overdoses. While in detention he has also engaged in several periods of long term food refusal.

Mr X attended multiple specialist counselling sessions and received intermittent support from IHMS mental health professionals. He was closely monitored by Serco officers and the mental health team for extended periods of time due to acute concerns for his safety. In September 2015 IHMS recommended that Mr X would benefit from being placed in a less restrictive environment.

Mr X also received treatment for a range of physical health conditions including a persistent bacterial stomach infection and associated gastric problems and a pilonidal sinus cyst. He suffers from chronic shoulder, elbow and foot pain and requires regular non-addictive pain-relief medication. In late 2015 a magnetic resonance imaging scan identified a tear in Mr X's knee and a general practitioner recommended Mr X be reviewed by an orthopaedic specialist, but this request was declined. In February 2016 he was reviewed by a pain specialist who again recommended a referral to an orthopaedic specialist and physiotherapist and an increase in his pain medication. Mr X was scheduled to attend an appointment with the orthopaedic specialist in March 2016, but was still waiting to be allocated a physiotherapy appointment at the time of IHMS's latest review.

June 2011	Mr X sewed his lips together and refused food and fluids.
8 November 2014	Mr X undertook voluntary food refusal. At the time of IHMS's review, dated 9 December 2014 he had not eaten for 32 days. Mr X informed IHMS that he was aware of the implications food refusal was having on his body but stated that 'starvation is the right way to end his life.' Mr X was involuntarily transferred to hospital for psychiatric assessment on two occasions while undertaking food refusal. On both occasions he was assessed to be mentally competent to refuse treatment and was not admitted.
2 May – 11 June 2015	Mr X undertook voluntary food refusal for 41 days.
15 January 2016 – ongoing	Mr X undertook voluntary food and fluid refusal. At the time of IHMS's latest review, dated 24 February 2016 he was drinking fluids but had not eaten for 41 days.

Other matters

28 August 2014	The Australian Federal Police advised DIBP that there were no charges recorded against Mr X for his alleged involvement in a major disturbance at Christmas Island IDC on 9 November 2010.
3 February 2015	The Ombudsman's office opened an investigation into the circumstances of Mr X's incarceration at a correctional centre for 88 days without charge in 2011. DIBP advised that the correctional facility was a designated place of detention and Mr X remained detained under s 189(1) while he was incarcerated.

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.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged restricted detention may pose. The Ombudsman notes with concern the reported impact that ongoing detention is having on Mr X's mental health and that IHMS has recommended Mr X be considered for a placement in a less restrictive environment.

The Ombudsman recommends that consideration be given to granting a Bridging visa or a community detention placement to Mr X while he awaits finalisation of his immigration case.