

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O report on Mr X who has remained in restricted immigration detention for more than 66 months (five and a half years). The previous reports are:

Report 864/12 was tabled in Parliament on 28 November 2012
 Report 1001099 was tabled in Parliament on 11 December 2013
 Report 1001451 was tabled in Parliament on 27 August 2014
 Report 1001795 was tabled in Parliament on 3 December 2014.

This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1962
Ombudsman ID	1002249
Date of DIBP's reports	18 February 2015 and 19 August 2015
Total days in detention	2,007 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001795), Mr X remained at Facility B.	
13 March 2015	Transferred to Facility C.

Recent visa applications/case progression

17 September 2014	Refugee Review Tribunal (RRT) affirmed the Department of Immigration and Border Protection's (DIBP) decision of 12 March 2014 to refuse Mr X's fourth application for a Protection visa.
22 September 2014	Requested judicial review by the Federal Circuit Court (FCC).
29 October 2014	Applied for an injunction to the FCC to prevent his removal from Australia. He cited the privacy breach caused by the unintentional release of his personal information through DIBP's website as the basis for his application. ¹
12 November 2014	FCC quashed the RRT's decision of 17 September 2014 and remitted it to the RRT for a decision.
26 November 2014	FCC adjourned Mr X's injunction application with a final hearing scheduled for 12 February 2016.

¹ 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.

16 January 2015	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.
19 February 2015, 6 March 2015 and 29 April 2015	DIBP advised that Mr X provided three responses in relation to country information and other information relevant to the ITOA.
25 March 2015	RRT affirmed DIBP's decision to refuse Mr X's application for a Protection visa.
27 March 2015	Found not to meet the guidelines for referral to the Minister under s 417 of the <i>Migration Act 1958</i> .
7 April 2015	Requested judicial review of the RRT's decision by the FCC. This was outstanding at the time of DIBP's latest report.
11 June 2015	DIBP finalised the ITOA and found that Mr X's circumstances do not engage Australia's <i>non-refoulement</i> obligations.
15 June 2015	Sought judicial review by the FCC. A final hearing was scheduled for 23 February 2016.
17 July 2015	Issued with a Criminal Justice Stay Certificate. Mr X is a witness in an ongoing trial.
19 August 2015	DIBP advised that it has commenced assessing whether to refer Mr X's case to the Minister to consider granting a Bridging visa under s 195A.

Health and welfare

December 2014	International Health and Medical Services (IHMS) advised that Mr X attended three specialist counselling appointments but did not attend the appointments scheduled in February 2015.
18 March 2015	Requested a referral to the psychologist following anxiety related to his upcoming court matters.
1 April 2015	The psychologist assessed that his risk of self-harm was low and recommended that he attend weekly appointments.
May 2015	Mr X advised IHMS that he was feeling depressed, anxious and was sometimes hearing voices. He also said that he was suffering from some memory loss and was referred for specialist psychological counselling.
25 June 2015	Diagnosed with type 2 diabetes and prescribed with medication. However, he decided to trial a new diet and exercise program instead of taking medication.
15 June 2015	The psychiatrist assessed that there was no evidence of anxiety or psychotic disorder and recommended that he continue psychological treatment.
30 July 2015	IHMS advised that his blood pressure was stable and continued to be monitored.

Other matters

17 November 2014	The Ombudsman's office finalised the investigation into Mr X's complaint about facsimile machines not working at Facility B. The Ombudsman's office found that DIBP had taken steps to address the faults identified with the machines.
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Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is also subject of a Criminal Justice Stay Certificate and cannot be removed from Australia while this is in place.

Mr X is also awaiting the outcome of three matters scheduled to be heard in the FCC during February 2016. These relate to his application for an injunction to prevent his removal from Australia, and his appeals against the RRT's decision of 25 March 2015 and DIBP's ITOA decision of 11 June 2015.

DIBP advised that it has commenced assessing Mr X's case against the guidelines to consider granting a Bridging visa under s 195A. The Ombudsman recommends that this process be completed as soon as possible given that Mr X's immigration matters are likely to be protracted.