

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 1002406 was tabled in Parliament on 24 February 2016. 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	1989
Ombudsman ID	1001305-O
Date of DIBP's reports	6 April 2016 and 5 October 2016
Total days in detention	1276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002406), Mr X remained at Christmas Island Immigration Detention Centre (IDC).	
9 October 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).
16 April 2016	Transferred to Yongah Hill IDC.

Recent visa applications/case progression

23 October 2015	The Administrative Appeals Tribunal (AAT) ¹ set aside the Department of Immigration and Border Protection's (DIBP) decision to refuse to grant Mr X a Temporary Protection visa and substituted a decision to refuse to grant him a Temporary Protection visa (TPV). DIBP advised that this followed legislative amendment by which Mr X's application for a Protection visa was taken to be a valid application for a TPV.
16 November 2015	Requested judicial review by the Federal Circuit (FCC).
6 April 2016	DIBP advised that Mr X was not being considered for the grant of a Bridging visa while his criminal matters remained outstanding.
8 September 2016	The FCC set aside the AAT's decision and remitted the matter to the AAT for reconsideration.
16 September 2016	The AAT review commenced.

¹ On 1 July 2015 the Migration Review Tribunal and Refugee Review Tribunal were merged into the AAT.

Other legal matters

2 May 2016 – 11 May 2016	Mr X appeared at a Magistrates Court in relation to the disturbance at Christmas Island IDC on 5 September 2014. He pleaded guilty to a charge of taking part in an unlawful assembly and a conditional release order to be of good behaviour for six months was imposed. Mr X applied for and was granted a spent conviction order.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for mental health matters including a history of torture and trauma, post-traumatic stress disorder, anxiety, depression and difficulty sleeping. Mr X was reported to have attended specialist counselling for torture and trauma whilst at Wickham Point APOD which the counsellor had recommended continue. However, the counselling ceased when Mr X was transferred to Yongah Hill IDC. IHMS stated that Mr X continued to follow up with IHMS mental health services following the transfer.

IHMS further advised that Mr X was diagnosed with and/or received treatment for physical health concerns including a perforated ear drum, a gastroenterological issue and dermatitis. He was initially placed on a waiting list in Perth for surgery to repair his ear drum with a date scheduled in December 2015. However, he was transferred to a different immigration detention facility (IDF) before he could attend this appointment. He was then referred to a hospital in Darwin which advised there was an 18-month waiting list for ear, nose and throat (ENT) appointments. A referral to a private ENT specialist was made on 6 January 2016 with an appointment date pending.

Ombudsman assessment/recommendation

Mr X was found not to be owed protection under the Refugee Convention and the complementary protection criterion. The FCC has set aside an AAT decision that affirmed the refusal of Mr X's TPV application and remitted the matter to the AAT for reconsideration.

The Ombudsman notes DIBP's advice of 6 April 2016 that Mr X would not be considered for a Bridging visa whilst his criminal matters remained outstanding. Now that these matters have been finalised the Ombudsman recommends that he be considered for a Bridging visa pending resolution of his immigration status.