

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).

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1002313
Date of DIBP's reports	2 March 2015 and 3 September 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

5 March 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Villawood Immigration Detention Centre (IDC) after he had been living unlawfully in the community from 27 October 2011.
22 January 2015	Transferred to Yongah Hill IDC.

Visa applications/case progression

5 August 2005	Mr X arrived in Australia on a Vocational Education and Training Sector (VETS) visa without work rights.
12 August 2005	Granted a further VETS visa with limited work rights.
24 September 2007	Applied for a Higher Education Sector (HES) visa.
4 October 2007	Granted HES visa.
30 September 2008	Granted VETS visa
14 August 2009	Lodged application for a Skilled Graduate visa. An associated Bridging visa was granted on the same day.
27 April 2010	Granted a Skilled Graduate visa which was valid until 27 October 2011.
10 November 2010	Departed Australia.
10 February 2011	Returned to Australia.
27 October 2011	Skilled Graduate visa ceased and he remained in the community unlawfully.
5 March 2013	Located in the community and detained under s 189(1).
11 March 2013	Lodged application for Bridging visa.
12 March 2013	Bridging visa refused.
13 March 2013	Appealed to the Migration Review Tribunal (MRT).
20 March 2013	The MRT affirmed the original decision.
5 April 2013	Mr X signed a request for removal.

10 April 2013	He withdrew the request for removal.
11 April 2013	Lodged an application for a Protection visa and an associated Bridging visa.
12 April 2013	Bridging visa application was found to be invalid.
17 July 2013	Protection visa application refused.
22 July 2013	Appealed to the Refugee Review Tribunal (RRT).
24 September 2013	RRT affirmed original decision.
16 October 2013	Requested judicial review by the Federal Circuit Court (FCC) of the RRT's decision.
21 October 2013	Bridging visa application refused.
31 October 2013	MRT affirmed the decision to refuse the Bridging visa application.
28 March 2014	Mr X applied to the FCC for an order preventing his removal from Australia on account of the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. ¹
16 May 2014	The FCC dismissed the application for review of the RRT's decision.
6 June 2014	Mr X appealed the dismissal by the FCC of his application for review of the RRT's decision to the Federal Court (FC).
27 June 2014	Mr X was issued with a letter inviting him to comment on the privacy breach.
1 July 2014	Mr X provided his response concerning the privacy breach.
22 August 2014	The FC dismissed the appeal against the FCC's dismissal of his application for review of the RRT's decision.
18 September 2014	Mr X applied to the High Court for special leave to appeal the decision of the FC.
11 December 2014	The High Court dismissed the special leave application.
12 January 2015	DIBP notified Mr X that it had commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engaged Australia's <i>non-refoulement</i> obligations.
16 January 2015	Lodged Bridging visa application.
19 January 2015	Discontinued the FCC proceedings in which he had sought an order preventing his removal from Australia.
20 January 2015	DIBP refused the Bridging visa application. On the same day Mr X appealed the Bridging visa refusal to the MRT.

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.

30 January 2015	MRT affirmed the decision to refuse the Bridging visa application.
14 April 2015	DIBP finalised Mr X's ITOA and found that his case did not engage Australia's <i>non-refoulement</i> obligations.
24 April 2015	Requested judicial review at the FCC in relation to the ITOA decision. A Directions hearing was listed for 24 August 2015.

Health and welfare

March 2014	Mr X presented with difficulties sleeping and feeling constantly worried.
7 March 2014	Seen by an International Health and Medical Services (IHMS) psychiatrist who diagnosed adjustment disorder with anxious and depressed mood. The psychiatrist prescribed Mr X with antidepressant medication.
June 2014	Disclosed a history of torture and trauma and was referred for psychological counselling with a specialist counselling service.
5 August 2014 – 23 December 2014	Attended nine appointments with a specialist counselling service.
5 August 2014	A counsellor with the specialist counselling service noted that Mr X was experiencing ongoing worry and ruminating thoughts due to his detention and uncertainty about the future. The counsellor also noted that Mr X had presented with symptoms reflective of post-traumatic stress disorder, anxiety and depression.
8 September 2014	Mr X attended a follow-up external psychiatric review. The psychiatrist advised that Mr X's symptoms indicated an adjustment disorder with depressed mood and he prescribed further medication. The psychiatrist stated that Mr X's symptoms would improve out of a restricted detention setting and if community detention were an option it would likely improve his mental health.
December 2014	The psychologist with the specialist counselling service reported that Mr X was struggling to cope effectively with his levels of anxiety and low mood and that prolonged detention was likely to lead to an increase in the frequency and intensity of his worries and fears, further aggravating his mental state and impeding the progress of his recovery. The psychologist also stated that if permitted, Mr X would benefit from residing in the community, as a change from a restrictive environment could prompt a shift in his negativity.
30 January 2015	Saw a psychiatrist following his general practitioner's concern that Mr X had remained worried with depressed mood. The psychiatrist increased the dose of his medication.
February 2015	IHMS issued a new referral for psychological counselling with the specialist counselling service.
23 February 2015 – 17 June 2015	Attended seven appointments with a specialist counselling service and a further appointment was scheduled for 26 August 2015.

3 April 2015 – 18 August 2015	IHMS reported that it had continued to support and treat Mr X for a history of torture and trauma, post-traumatic stress disorder and adjustment disorder. He receives regular counselling and has been prescribed with two psychotropic medications.
27 May 2015	Underwent an ultrasound of his forehead. No further information was provided.

Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in a number of minor incidents during his detention which related to causing a disturbance and aggressive and abusive behaviour.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X advised that since he had been detained his mood had been low and he was suffering from depression. He said that while he was at Villawood IDC he was able to manage this because his friends visited him almost every day. He stated that after 18 months in detention he started to take a low dose of antidepressant medication, which was increased to a much larger dosage after he was transferred to Yongah Hill IDC. Mr X said the medication made him feel numb and lethargic and he could not do anything.

Mr X said that a lump which was visible on his forehead had been investigated and he had been advised it would not be removed unless it continued to grow. He said he wanted the lump removed and he was very worried about it. He said that, otherwise, his physical health was generally good.

Mr X advised that there was fighting at Yongah Hill IDC almost every week. He said this put a great deal of stress on everyone as they were trying to stay out of trouble and keep safe. He said it was not a safe environment. He alleged that certain detainees were intimidating towards other detainees and detention staff. He also alleged that there was a group of detainees who were using illegal drugs.

Mr X said that in the previous week a person in his compound had self-harmed and was still in hospital. He alleged that Serco did not respond to incidents and it was safer just to remain in his room.

Mr X said his friends would be happy to support him if he was released into the community. He felt he had been treated unfairly by being kept in detention as he was not a criminal. He asked why he could not live in the community as he felt unsafe at Yongah Hill IDC.

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 an ITOA.

The Ombudsman notes with concern that IHMS has reported that Mr X's mental health is affected by his detention circumstances and both the psychologist and psychiatrist treating Mr X have recommended a less restrictive environment to improve his mental health.

The Ombudsman recommends in light of Mr X's mental health concerns and the safety concerns Mr X raised about Yongah Hill IDC that his detention placement be reviewed and consideration be given to a less restrictive placement.

The Ombudsman notes the reported ongoing problems at Yongah Hill IDC and has previously recommended that all reported incidents are reviewed and that steps are taken to address this reported concern.

During visits by Ombudsman staff to Yongah Hill IDC in August and September 2015 detainees, including Mr X, advised of ongoing concerns including alleged bullying, assault, violence, threats and intimidation. These concerns were also noted by detention centre staff.

In light of this, 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 Yongah Hill IDC.