

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 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1003430
Date of DIBP's report	16 September 2015
Total days in detention	734 (at date of DIBP's report)

Detention history

12 September 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
6 April 2014	Transferred to Yongah Hill IDC.
23 May 2014	Transferred to Perth IDC.
8 May 2015	Transferred to Yongah Hill IDC.
21 May 2015	Transferred to Christmas Island IDC.

Visa applications/case progression

5 January 2005	Mr X lodged an application for a Temporary Work visa from Country A. His work experience claims were assessed to be false and he withdrew his application on 28 July 2006.
5 May 2007	Lodged a further application for a Temporary Work visa which was granted on 28 May 2007.
10 June 2007 – 15 November 2010	Mr X arrived in Australia as the holder of a Temporary Work visa. He worked lawfully in Australia for three different employers on three different Temporary Work visas, and was granted two associated Bridging visas while between employers.
9 November 2010	Mr X's employer notified the Department of Immigration and Citizenship (DIAC) that his employment would cease on 15 November 2010.
10 January 2011	DIAC notified Mr X that it intended to cancel his Temporary Work visa under s 116 and invited him to respond.
1 February 2011	Mr X's Temporary Work visa was cancelled after DIAC received his response.
12 September 2013	Mr X remained in the community as an unlawful non-citizen until he was located by police and subsequently detained under s 189(1).

30 December 2013	Lodged a Protection visa application with an associated Bridging visa application.
2 January 2014	Associated Bridging visa application refused.
10 February 2014	Protection visa application refused.
17 February 2014	Appealed to the Refugee Review Tribunal (RRT).
9 May 2014	RRT affirmed original decision.
14 May 2014	Found not to meet the guidelines for referral to the former Minister under s 195A.
18 June 2014	Requested judicial review by the Federal Circuit Court.
16 September 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X was identified as being affected by the unintentional release of personal information. ¹ DIBP further advised that it is awaiting the outcome of Mr X's judicial review before it commences an assessment of the impact of the privacy breach on his circumstances.

Health and welfare

8 December 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist on multiple occasions and diagnosed with adjustment disorder. He is supported by the mental health team as required.
8 May 2015	IHMS advised that Mr X presented with pain in his head and hand, facial redness, a cut lip and friction burns to his knees after being restrained by Serco officers. He was assessed by IHMS and the next day he was transferred to an emergency department after reporting ongoing head pain. He was assessed and discharged the same day.
8 June 2015	Mr X presented to IHMS complaining of having had a blocked nose for one month. He was examined and prescribed with nasal spray.
2 July 2015	Mr X complained of wrist pain after he was restrained by Serco officers. He was referred for an x-ray which identified a fracture. His wrist was placed in a cast which he was advised to keep on for six weeks. A DIBP Incident Report also recorded that Mr X had been on a Behavioural Management Plan for 42 consecutive days. No further information was provided.
8 July 2015	IHMS advised that Mr X removed his own cast. The next day his wrist was placed in another cast, which he removed on 20 July 2015. His wrist was then placed in a sling instead.

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.

Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous behavioural incidents including assaulting Serco officers, DIBP staff and other detainees and displaying aggressive, violent and threatening behaviour.	
22 May 2014 – 31 August 2015	DIBP Incident Reports recorded that unplanned use of force was required on nine occasions to prevent Mr X from injuring himself and others.
24 May 2014 – 3 July 2015	DIBP Incident Reports recorded that Mr X was isolated in an observation room for over 24 hours on four occasions.
6 May 2015	A DIBP Incident Report recorded that Mr X allegedly assaulted a Serco officer. The officer sustained bruising to the face and was taken to hospital for treatment.
8 May 2015	A DIBP Incident Report recorded that minimal force was used to restrain Mr X after he spat on Serco officers during his transfer from Perth IDC to Yongah Hill IDC. Later that day, a separate Incident Report recorded that mechanical restraints were used on Mr X after he attempted to assault two Serco officers by head-butting and kicking them. Mr X sustained injuries to his head, hands and knees for which he attended the emergency department the following day.
2 July 2015	A DIBP Incident Report recorded that Mr X swore at a Serco officer and threw a container of food at him. Three Serco officers restrained Mr X and escorted him to the Support Unit. Mr X resisted the use of force and continued to swear at the officers. IHMS attended the Support Unit to assess Mr X and provided him with an icepack for his wrist. An x-ray subsequently identified that his wrist was fractured.

Other matters

12 September 2013	DIBP advised that Mr X was located by police and charged with trespassing. No further information was provided.
17 July 2015	Mr X lodged a complaint with the Ombudsman's office alleging that he had been assaulted and injured by Serco officers on four occasions and that Serco officers had failed to send his paperwork to the Migration Review Tribunal as agreed. These matters are currently under investigation by the Ombudsman's office.
16 September 2015	DIBP advised that three alleged incidents involving Mr X had been referred to the Australian Federal Police for investigation. At the time of DIBP's review two of these matters were still being investigated.
24 December 2015	Mr X lodged a complaint with the Ombudsman's office alleging that some of his personal possessions had been lost while he was detained at Christmas Island IDC. This matter is currently under investigation by the Ombudsman's office.

Ombudsman assessment

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 judicial review.

The Ombudsman notes with concern the number of alleged incidents involving Mr X and the advice from IHMS that Mr X sustained injuries on two occasions after Serco officers used unplanned force to restrain him. The Ombudsman makes no recommendations in this report.