

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	1960
Ombudsman ID	1002314
Date of DIBP's reports	10 March 2015 and 15 September 2015
Total days in detention	920 (at date of DIBP's latest report)

Detention

9 March 2013	The Department of Immigration and Border Protection (DIBP) reported that Mr X was detained at Facility B under the stolen identity of another person, Mr Z.
30 March 2015	Transferred to Facility C.

Visa applications/case progression

<p>DIBP advised that it has been unable to establish the date and circumstances of Mr X's entry to Australia. It stated that prior to 1990 Mr X assumed key elements of another person's identity, Mr Z, including his name.</p> <p>DIBP advised that Mr Z was a Country A citizen who obtained a Transitional (Permanent) visa on 1 September 1994.</p>	
20 September 2010	A delegate of the former Minister cancelled Mr Z's Transitional (Permanent) visa due to character considerations under s 501 of the <i>Migration Act 1958</i> . However this was on the basis of wrong factual information, as it was Mr X rather than Mr Z who had a substantial criminal record.
Dates not provided	Mr X, using the stolen identity of Mr Z, sought review of the visa cancellation decision, which was affirmed on merits review.
13 May 2013	Mr X, using the stolen identity of Mr Z, lodged a Protection visa application.
24 July 2013	Protection visa application in the name of Mr Z was refused.
12 August 2013	Mr X, using the stolen identity of Mr Z, appealed to the Refugee Review Tribunal (RRT).
11 September 2013	RRT affirmed original decision.
5 December 2013	DIBP's New South Wales Identity Verification Team confirmed the identity of Mr X, born in 1960 and a citizen of Country A, based on fingerprint and photograph analysis.

17 January 2014	DIBP commenced removal action in relation to Mr X, which was suspended due to the privacy breach arising from the publication of his personal information on DIBP's website. ¹
21 January 2014	DIBP's records were amended to reflect that the s 501 visa cancellation decision made in respect of Mr Z was tainted by jurisdictional error and a legal nullity. DIBP advised that any merits review decisions previously made that led to cancellation of Mr Z's Transitional (Permanent) visa have been declared to be affected by jurisdictional error and invalid, on the basis that it was Mr X and not Mr Z who had sought review of the visa cancellation decision.
14 July 2014	Mr X was issued with a letter inviting him to comment on the privacy breach and given 14 days to respond. As at 4 March 2015 he had not responded.
18 August 2014	DIBP recommenced removal action in relation to Mr X.
22 October 2014	DIBP met with officials from the Country A High Commission to progress a travel document application.
10 March 2015	DIBP stated that Mr X was initially an involuntary removal and had not co-operated with removal action. DIBP also advised that it had experienced significant delays in obtaining a travel document from the Country A High Commission, and the matter had been escalated to the Australian High Commission in Country A.
30 April 2015	Mr X signed a request for removal from Australia.
4 August 2015	The Country A High Commission conducted an interview with Mr X in relation to his travel document application. This matter remains ongoing.

Criminal history

1990 to 2001	Mr X, using the stolen identity of Mr Z, was involved in numerous criminal activities involving violence, illicit drugs, and stealing and was sentenced to various terms of imprisonment.
11 March 2005	Mr X, under the stolen identity of Mr Z, was convicted of manslaughter in the New South Wales Supreme Court, and sentenced to ten years' imprisonment.
31 December 2014	He was referred to the Australian Federal Police in relation to six incidents where he caused damage to Commonwealth property, amounting to approximately \$23,000 damage.
27 April 2015	He pleaded guilty to all six charges of damage to Commonwealth property and was ordered to pay fines and court costs.

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.

Health and welfare

21 June 2013	<p>International Health and Medical Services (IHMS) reported that Mr X had shown frustration and anger about his detention situation and had a history of impulse control problems. He was seen by a psychiatrist who found no evidence of mental illness and stated no treatment was required.</p> <p>Mr X was offered psychological support multiple times but he declined to participate in any mental health reviews or treatments sessions.</p>
11 March 2014	<p>IHMS advised that Mr X had complained of ongoing abdominal pain. He was referred for an ultrasound.</p>
14 and 27 March 2014	<p>Ultrasound results were abnormal and specialists gave a possible diagnosis of chronic pancreatitis.</p>
June 2014	<p>Referred to a gastroenterologist for further evaluation and management of his possible pancreatitis.</p> <p>IHMS advised that the review was cancelled following a change in Mr X's detention location. However, his condition was monitored by a general practitioner and Mr X had not complained of any physical health concerns or required any prescribed treatment.</p>
31 December 2014	<p>An IHMS psychologist commented, following a review, that Mr X presented with slightly elevated/irritable mood, disorganised thought processes and a sense of victimisation. The psychologist assessed that Mr X's symptoms were not related to a major mental illness but were possibly related to long-term substance abuse which had resulted in some cognitive deficit.</p>
25 March 2015	<p>Mr X stated to IHMS that he wished to be returned to his home country and agreed to request mental health services if required.</p>

Detention incidents

<p>DIBP Incident Reports recorded that Mr X was allegedly involved in numerous incidents including damaging property, abusive and aggressive behaviour, being in possession of a weapon and assault.</p>	
11 July 2014	<p>A detainee alleged that she was sexually assaulted by Mr X. No further information was provided.</p>

Other matters

<p>DIBP advised that Mr X has a de facto partner and claimed step-daughter who are Australian citizens.</p>

Information provided by Mr X

<p>Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.</p>
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Case status

Mr X has no ongoing matters before DIBP or the courts. Mr X signed a request for removal from Australia on 30 April 2015 and DIBP is proceeding with removal action.