

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 36 months (three years).

Name	Mr X
Citizenship	Country A
Year of birth	1978
Ombudsman ID	1002266
Date of DIBP's reports	2 March 2015 ¹ , 25 June 2015 and 22 December 2015
Total days in detention	1,095 (at date of DIBP's latest report)

Detention history

18 May 2012	Detained under s 189(1) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 333 <i>Lefroy</i> . He was transferred to Christmas Island Immigration Detention Centre (IDC).
15 June 2012	Transferred to Wickham Point IDC.
23 July 2012	Transferred to Scherger IDC.
13 September 2012	Granted a Bridging visa and released from detention.
20 April 2013	Re-detained under s 189(1) and transferred to Villawood IDC.
29 June 2015	Transferred to Christmas Island IDC.
9 October 2015	Transferred to Yongah Hill IDC.

Visa applications/case progression

26 June 2012	The former Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.
5 September 2012	Lodged a Protection visa application.
13 September 2012	The former Minister intervened under s 195A and Mr X was granted a Bridging visa.
29 August 2012 and 13 September 2013	Protection visa application interviews conducted.
21 September 2012	He was identified as a person of interest (POI) by the Department of Immigration and Citizenship's (DIAC) Intelligence Analysis Section.

¹ On 13 March 2014 DIBP advised that the 24 month s 486N review for Mr X did not meet its statutory obligations due to a system failure which did not capture the dates that he had been in and out of immigration detention. DIBP further advised that it had introduced improvements in its data management processes to reduce the likelihood of this issue recurring.

19 April 2013	<p>Following outstanding criminal allegations received from the Country A Government, at the request of DIAC Mr X presented to the New South Wales Compliance office. Mr X had reportedly failed to disclose his alleged criminal impropriety to DIAC and was considered to pose a risk to the Australian community.</p> <p>His Bridging visa was cancelled and he was re-detained. He was transferred to Villawood IDC the following day.</p>
10 October 2013	<p>Protection visa application refused as he was found to be excluded under Article 1F(b) of the Refugee Convention because of alleged involvement in a serious crime. Therefore, there was no assessment of Mr X's protection claims. He was also found to be affected by the complementary protection ineligibility provisions in s 36(2C).</p>
22 October 2013	<p>Appealed to the Administrative Appeals Tribunal (AAT).</p>
17 March 2014	<p>The National Security and Serious Crimes Reporting Team (NSSCRT) confirmed that Mr X remained a POI due to an alleged outstanding murder charge in Country A.</p>
9 February 2015	<p>AAT set aside the decision and remitted the matter to the Department of Immigration and Border Protection (DIBP).</p>
25 June 2015	<p>The NSSCRT confirmed that Mr X remained a POI.</p>
11 November 2015	<p>DIBP advised that Mr X's visa application was allocated to a delegate for consideration.</p>
22 December 2015	<p>DIBP advised that following legislative amendment Mr X is only eligible for a temporary visa.</p> <p>DIBP further advised that processing of Mr X's protection claims had commenced but security and character assessments had not yet been requested.</p>

Health and welfare

29 June 2013 – ongoing	<p>International Health and Medical Services (IHMS) advised that Mr X presented with multiple mental health concerns which include a history of torture and trauma, chronic depression and anxiety symptoms, and post-traumatic stress disorder (PTSD).</p>
4 and 16 July 2013	<p>A DIBP Incident Report recorded that Mr X threatened self-harm on two occasions because he wanted to be moved out of Compound B as there were no other Language C-speaking detainees with whom he could talk. No further information was provided.</p>

19 August 2013 – ongoing	<p>Mr X was diagnosed with type 2 diabetes. He was educated on how to manage his condition and recommended for a diabetic diet control only.</p> <p>In October 2015 Mr X was prescribed with oral medication to manage his condition.</p> <p>On 24 November 2015 IHMS advised that he required regular reviews with a general practitioner (GP), optometrist and podiatrist.</p>
October 2013	The specialist counsellor advised that Mr X had symptoms of PTSD and further treatment was recommended.
22 October 2013 – 25 February 2014	Attended 30 specialist counselling sessions with a psychologist.
24 February 2014	A psychiatrist diagnosed Mr X with mild adjustment disorder with anxious and depressed mood and recommended ongoing counselling.
3 July 2014 – 31 July 2014	Attended four physiotherapy sessions to treat ongoing neck pain. No further follow up was required.
October 2014	IHMS reported that Mr X had advised the psychologist that his mental health symptoms were exacerbated because of the length of time in detention. He presented with emotional distress and heightened anxiety associated with his detention circumstances. The psychologist advised that Mr X's mental health was likely to deteriorate further because of the ongoing uncertainty of his immigration status.
4 February 2015 – 25 February 2015	Attended four specialist counselling sessions with a psychologist. The psychologist reported that Mr X's persistent worry about the outcome of his protection claims continued to exacerbate his anxiety, increased his symptoms and he was consequently exhausted and dejected. The psychologist further stated that prolonged detention would impede progress of Mr X's recovery and recommended he be transferred to community detention while awaiting the outcome of his protection claims.
11 March 2015	IHMS reiterated the psychologist's ongoing concerns about Mr X's deteriorating mental health and the recommendation that he be transferred to the community.
12 March 2015 – 25 June 2015	IHMS reported that Mr X continued to see the IHMS Mental Health Team, attended specialist counselling and attended group relaxation sessions on a regular basis.
13 April 2015 – 24 June 2015	Attended seven specialist counselling appointments with a psychologist.

26 June 2015 – 24 November 2015	<p>IHMS reported that Mr X continued to attend specialist counselling with a psychologist. The psychologist advised that Mr X experienced an increase in PTSD symptoms while located at Villawood IDC and it was recommended that Mr X continue to receive ongoing counselling.</p> <p>When he was transferred to Yongah Hill IDC on 9 October 2015 he was referred for specialist counselling and ongoing IHMS mental health support, including psychology sessions.</p>
16 July 2015	<p>Referred to a cardiologist following a complaint about chest pain on exertion. IHMS advised that he has an elevated risk for cardiac issues due to abnormal cholesterol levels and his diabetic condition. An appointment was scheduled for 2 December 2015.</p>

Information provided by Mr X

During an interview with Ombudsman staff at Villawood IDC on 18 June 2015 Mr X advised that his case manager had told him a submission was with the Minister and he understood that he needed to wait for a decision. He said that his lawyer had also told him he needed to wait.

Mr X stated that he would prefer his own room as he liked to pray a lot and would prefer more privacy. He said he attended some activities and three times a week he had visitors from the community, but mostly he stayed in his room.

He said he had some health issues and regularly attended a specialist counselling service. Mr X stated that if he needed any assistance he contacted his case manager or would speak with Serco officers.

Ombudsman assessment/recommendation

Mr X has been in restricted detention for a cumulative period of more than three years. He was found to be excluded under Article 1F(b) of the Refugee Convention and there was no assessment of his protection claims.

The Ombudsman notes that it took the AAT 15 months before it remitted the decision to DIBP. Notwithstanding this delay, the Ombudsman notes with serious concern that there was a nine-month delay before DIBP allocated Mr X's case to a delegate for consideration.

The Ombudsman also notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose. In Mr X's case, IHMS reported that Mr X's mental health has continued to deteriorate because of his prolonged detention and uncertainty about his immigration status and the psychologist has recommended that Mr X be transferred to the community while awaiting an outcome on his case.

In light of the length of time Mr X has been waiting for his case to be progressed the Ombudsman recommends that his case be expedited for finalisation.