

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	1990
Ombudsman ID	1003165
Date of DIBP's reports	6 August 2015 and 23 January 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

8 June 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 342 <i>Ucaty</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
9 June 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
5 July 2012	Transferred to Wickham Point APOD.
20 July 2012	Transferred to Yongah Hill IDC.
16 October 2012	Granted a Bridging visa and released from detention.
22 November 2013	Mr X's Bridging visa was cancelled under s 116(1) and he was held in police custody.
2 December 2013	Mr X was released from police custody and re-detained under s 189(1). He was transferred to Villawood IDC.
11 December 2014	Transferred to Yongah Hill IDC.

Visa applications/case progression

23 July 2012	The former Minister lifted the bar under s 46A to allow him to lodge a temporary visa application.
16 October 2012	Granted a Bridging visa.
16 November 2012	Lodged a Protection visa application with an associated Bridging visa application.
27 November 2012	Mr X's Bridging visa expired and he became an unlawful non-citizen.
21 December 2012	Granted a Bridging visa.
22 November 2013	Bridging visa was cancelled under s 116(1) and he was held in police custody.
7 March 2014	Appealed Bridging visa cancellation to the Migration Review Tribunal (MRT).

12 March 2014	Mr X was notified of the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. ¹ DIBP advised that the privacy breach would be taken into account when considering his protection claims.
18 March 2014	MRT affirmed original decision.
5 February 2014	Protection visa application refused as he failed to satisfy clause 866.222 of the <i>Migration Regulations 1994</i> . ²
11 February 2014	Appealed to the Refugee Review Tribunal (RRT).
21 July 2014	RRT remitted the decision to DIBP for reconsideration.
24 June 2015	Mr X was notified that following legislative amendment, he is only eligible for a Temporary Protection visa (TPV). Mr X was invited to provide information in relation to his application.
7 July 2015	Mr X provided his response to DIBP.
3 September 2015	DIBP requested further information from Mr X in order to assess his TPV application. He provided his response on 8 September 2015.

Criminal history

21 November 2013	Mr X was charged with an offence and he was held in police custody.
2 December 2013	Mr X was granted bail and released from police custody.
29 May 2014	Mr X appeared before the C Court and was convicted of reckless wounding. He was sentenced to four months in prison with time served.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has not required treatment for any major physical health issues.	
7 March 2014	IHMS advised that Mr X disclosed a history of torture and trauma and was provided with specialist counselling.
7 December 2015	A mental health review did not record any significant mental health concerns apart from tension headaches associated with stress from ongoing detention.

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.

² This clause prevents people who arrived in Australia without a valid visa from being granted a permanent Protection visa. The amendment was introduced on 14 December 2013 but disallowed on 27 March 2014.

Ombudsman assessment

Mr X was detained on 8 June 2012 after arriving in Australia aboard SIEV *Ucaty* and was released on a Bridging visa on 16 October 2012. He was re-detained on 2 December 2013 following a domestic violence incident and sentenced to four months in prison with time served.

On 5 February 2014 Mr X's Protection visa application was refused. Following Mr X's appeal to the RRT, on 21 July 2014 his application was remitted to DIBP.

On 24 June 2015 Mr X was invited to provide additional information in relation to his Protection visa application, which he provided on 7 July 2015. Further information was requested on 3 September 2015, which Mr X provided on 8 September 2015.

The Ombudsman notes with concern that 11 months elapsed between the RRT's remittal and DIBP's invitation to Mr X to provide further information.

The Ombudsman notes that processing of Mr X's protection claims has commenced and security and character assessments have been requested. The Ombudsman makes no recommendations in this report.