

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	1982
Ombudsman ID	1002376
Date of DIBP's reports	30 March 2015 and 23 September 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

25 March 2013	Mr X approached the Department of Immigration and Citizenship (DIAC) after living unlawfully in the community. He was detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Facility B.
30 March 2015	Transferred to Facility C.

Visa applications/case progression

1 February 2005	Mr X arrived in Australia on a Higher Education Sector (HES) visa.
4 February 2005	Granted a further HES visa.
30 January 2006 – 9 November 2006	Issued with three non-compliance notices (NCNs) in relation to his HES visa as he did not meet his course requirements.
21 August 2006	Mr X was sent a Notice of Intention to Consider Cancellation of his HES visa.
30 November 2006	The Department of Immigration and Multicultural Affairs made a decision not to cancel his HES visa.
16 August 2007 and 25 June 2008	Mr X was issued with further NCNs following failure to recommence studies.
30 December 2008	Mr X's HES visa ceased and he lodged an application for a Vocational Education and Training Sector (VETS) visa and an associated Bridging visa. DIAC granted the Bridging visa.
23 March 2009	Mr X's VETS visa application was refused on the basis that he had not undertaken the required health checks.
26 April 2009	Appealed to the Migration Review Tribunal (MRT).
19 June 2009	The MRT determined that the appeal was not lodged within the required timeframe and consequently could not be considered.
30 December 2008 – 11 November 2009	Mr X was granted four Bridging visas.

20 November 2009	Lodged Protection visa application and associated Bridging visa application.
26 November 2009	Granted associated Bridging visa.
11 December 2009	Bridging visa ceased.
22 March 2010	Protection visa application refused.
26 March 2010	Appealed to the Refugee Review Tribunal (RRT).
6 May 2010 – 19 December 2012	Granted a further eight Bridging visas.
11 November 2010	RRT affirmed the original decision to refuse the Protection visa application.
8 December 2010	Requested judicial review by the Federal Magistrates Court (FMC) of the RRT's decision on the Protection visa application.
20 April 2012	Requested judicial review by the FMC of the MRT's refusal decision.
28 August 2012	The FMC dismissed the application for review of the RRT's decision.
22 February 2013	The FMC dismissed Mr X's application for review of the MRT's decision.
22 March 2013	Mr X's last Bridging visa ceased and he became an unlawful non-citizen.
25 March 2013	Mr X approached DIAC and was detained and transferred to Facility B.
25 March 2013, 27 March 2013 and 28 July 2014	Mr X made three further Bridging visa applications which were refused.
1 April 2013, 10 April 2013 and 8 August 2014	The MRT affirmed the decisions to refuse the three Bridging visa applications.
24 April 2013	DIAC initiated ministerial intervention requests under ss 195A and 197AB on behalf of Mr X. Mr X lodged an application with the Administrative Appeals Tribunal (AAT) seeking orders to set aside a decision by the former Minister not to consider a request for intervention under s 417.
25 April 2013	The ministerial intervention requests under ss 195A and 197B were found not to meet the guidelines for referral to the former Minister.
9 July 2013	The AAT dismissed the application seeking to set aside the former Minister's decision under s 42A(4) of the <i>Administrative Appeals Tribunal Act 1975</i> .
12 September 2013	Lodged a second Protection visa application triggering an associated Bridging visa application.
26 September 2013	The Bridging visa application was refused.
18 February 2014	The second Protection visa application was refused.

19 February 2014	Appealed to the Refugee Review Tribunal (RRT).
1 April 2014	RRT affirmed the original decision on the second Protection visa application.
14 July 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. ¹
9 August 2014	Mr X provided his response to DIBP.
19 January 2015	DIBP advised Mr X that his protection claims would be reassessed as part of a new International Treaties Obligations Assessment (ITOA) which would determine whether there were any <i>non-refoulement</i> obligations preventing DIBP from progressing removal arrangements.
30 January 2015	Mr X provided a response in relation to the ITOA.
16 February 2015	Mr X was issued with a further letter inviting him to provide additional information regarding the ITOA.
30 March 2015	DIBP advised that to date Mr X had not yet responded and the matter was ongoing.
4 June 2015	Lodged an application for a Bridging visa.
24 June 2015	Bridging visa application refused.
3 July 2015	DIBP finalised Mr X's ITOA and found that his case does not engage Australia's <i>non-refoulement</i> obligations.
13 July 2015	Mr X requested ministerial intervention under s 48B.
5 August 2015	The ministerial intervention request was finalised without referral to the Minister.
12 August 2015	DIBP notified Mr X that his submissions during the ITOA process had raised issues relating to his physical and mental health conditions which would be referred for assessment against the guidelines under s 195A for the Minister to consider granting him a Bridging visa.
7 September 2015	He provided DIBP with further information for consideration under the s 195A guidelines.
23 September 2015	DIBP advised that Mr X's case is affected by the recent Federal Court (FC) decision of 2 September 2015. ² DIBP stated it is currently considering the FC's decision.

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 *SZSJJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

Criminal history

<p>DIBP advised that Mr X was convicted in relation to resisting police in execution of their duty and not following their directions for offences that took place on 19 October 2006. No further information was provided.</p> <p>DIBP also advised that Mr X has a high Detention Services Provider security risk rating due to his criminal history and behaviour in detention.</p>	
7 March 2009	Received a criminal infringement notice in relation to offensive behaviour in or near a public place or school.
19 November 2012	Mr X was involved in an incident in court premises which led to his arrest.
28 February 2013	He pleaded guilty to several charges relating to disturbing the peace. The prosecutor withdrew the charges.

Health and welfare

27 March 2013 – ongoing	<p>International Health and Medical Services (IHMS) reported that at a psychiatrist review Mr X was diagnosed with paranoid personality disorder with episodes of psychosis.</p> <p>IHMS advised that since Mr X was detained he has been offered medication to treat his mental health issues on a number of occasions, but has always declined. IHMS stated that Mr X's mental health condition is characterised by feelings of distrust and consequently he had sporadically attended mental health appointments and declined mental health screening appointments.</p> <p>IHMS reported that while Mr X was at Facility B he had established a rapport with a psychiatrist and attended regular appointments which focused on psychotherapeutic management of his mental health condition.</p> <p>Since Mr X was transferred to Facility C on 30 March 2015, IHMS advised that his treatment has continued with a psychologist and he is monitored by IHMS and has access to the mental health team.</p>
16 April 2013	Admitted to hospital under the <i>Mental Health Act 2014</i> because of an episode of psychosis.
20 April 2013 – 29 May 2015	<p>IHMS reported that during this period Mr X had presented on five occasions with injuries sustained during alleged assaults from other detainees.</p> <p>IHMS advised that on some of these occasions Mr X allowed IHMS staff to assess and treat his injuries, but mostly declined treatment and reportedly would not allow assessment. IHMS further advised that follow-up appointments were arranged with the general practitioner who attempted to arrange further investigations of the injuries with radiology appointments and physiotherapy. Mr X declined further investigations and was semi-compliant with physiotherapy treatment.</p>

21 April 2013, 24 June 2013 and 28 June 2013	A DIBP Incident Report recorded that Mr X was placed in an observation room for over 24 hours. No further information was provided.
2 November 2013	A DIBP Incident Report recorded that Mr X allegedly set up a barricade when under Psychological Support Program observations at a high imminent level and he was transferred to an observation and behaviour management unit.
8 December 2013	A DIBP Incident Report recorded that Mr X threatened self-harm with a razor blade because he was upset with another detainee.
3 October 2014	A DIBP Incident Report recorded that unplanned use of force was used against Mr X to relocate him to an area used for behavioural management.
16 October 2014 and 23 October 2014	Attended physiotherapy appointments.

Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in numerous behavioural related incidents towards other detainees and detention staff.	
20 June 2013	Referred to the Australian Federal Police (AFP) in relation to an alleged assault. The AFP advised DIBP on 18 July 2015 that it would not be investigating the matter.

Other matters

16 August 2012 – 6 March 2015	<p>Mr X has lodged 14 complaints with the Commonwealth Ombudsman's office during this period. The complaints were about multiple agencies, including DIAC, DIBP, Australia Post, a private education provider and the Australian Capital Territory courts.</p> <p>The Ombudsman's office declined to investigate 13 of the complaints because Mr X did not respond to requests for further information, he was advised to pursue his complaint with the agency he was complaining about in the first instance, the complaint was not warranted in all circumstances, or it was out of jurisdiction.</p>
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<p>9 July 2013</p>	<p>Mr X lodged a complaint with the Commonwealth Ombudsman's office about a number of issues which related to his appeals against visa decisions made by DIAC, his application for a Complementary Protection visa and his personal safety at Facility B.</p> <p>Following an investigation, the Ombudsman's office provided a better explanation to Mr X and advised him of the status of his immigration matters.</p> <p>The Ombudsman's office also advised Mr X that DIBP had responded that it had provided him with appropriate documentation relating to his immigration case, and as he could no longer access the Immigration Advice and Application Assistance Scheme he had been given a list of legal firms providing free legal services who he could contact independently. The Ombudsman's office had also confirmed that Mr X had been transferred to a different compound within Facility B in consideration of his safety concerns. Mr X did not respond to these findings and the complaint investigation was closed on 18 December 2013.</p>
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Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. DIBP advised that his case is affected by the FC's decision of 2 September 2015 and it is currently considering this decision.