

**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 immigration detention for a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1983
Ombudsman ID	1002345-O
Date of DIBP's report	21 March 2016
Total days in detention	732 (at date of DIBP's report)

Detention history

1 May 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia with his sister ¹ aboard Suspected Illegal Entry Vessel (SIEV) 322 <i>Abbey</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
18 May 2012	Transferred to Darwin Airport Lodge APOD.
22 August 2012	Transferred to community detention.
9 October 2012	Granted a Bridging visa and released from community detention.
28 August 2014	Re-detained following the expiry of his Bridging visa. He was transferred to Facility B.
30 August 2014	Transferred to Facility C.
11 August 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X was relocated within Facility C to be accommodated with his sister.
14 May 2016	Transferred to Facility B.

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.
14 August 2012	The former Minister intervened under s 197AB to allow Mr X to reside in community detention with his sister.
21 August 2012	Lodged a Protection visa application.
5 October 2012	The former Minister intervened under s 195A to grant Mr X a Bridging visa.
9 October 2012	Granted a Bridging visa.

¹ Mr X's sister, Ms Y, has been in detention for less than two years and is not yet subject to reporting under s 486N.

26 October 2012	Protection visa application refused.
1 November 2012	Appealed to the Refugee Review Tribunal (RRT).
28 June 2013	RRT affirmed original decision.
26 July 2013 – 27 August 2014	Granted consecutive Bridging visas.
2 August 2013	Requested judicial review by the Federal Circuit Court (FCC).
19 August 2013	Mr X's identity was confirmed.
29 November 2013	FCC upheld original decision.
11 December 2013	Requested ministerial intervention under ss 48B and 417.
6 March 2014	Found not to meet the guidelines for referral to the former Minister under ss 48B or 417.
10 August 2014	Requested ministerial intervention under ss 48B and 417.
27 August 2014	Mr X's Bridging visa.
4 September 2014	Found not to meet the guidelines for referral to the former Minister under ss 48B or 417.
23 October 2014	Requested ministerial intervention under ss 48B and 417.
12 May 2015	Found not to meet the guidelines for referral to the former Minister under s 417.
4 June 2015	The Minister declined to intervene under s 48B.
21 March 2016	DIBP advised that Mr X is on a removal pathway and has been provided with information from the International Organization for Migration to assist him should he decide to return to Country A voluntarily.

Health and welfare

22 July 2012	International Health and Medical Services (IHMS) advised that Mr X was identified as a tuberculosis contact. He was monitored as per state policy.
28 August 2014	IHMS reported that following his return to detention Mr X threatened self-harm if he was sent back to Country A. He was placed on Supportive Monitoring and Engagement (SME) observations until he was able to guarantee his own safety. He also disclosed a history of torture and trauma and was referred for specialist counselling.
29 September 2014 – 1 February 2016	Attended regular specialist counselling sessions.
17 December 2014 and 20 January 2015	DIBP Incident Reports recorded that he refused food and fluid as a form of protest against his treatment by Serco and the lack of information from DIBP. IHMS advised that he was trialled on antidepressant medication.
5 February 2015	A DIBP Incident Report recorded that he threatened to self-harm if he was not transferred back to City D.

19 March 2015	Diagnosed with anxiety and prescribed with medication. His specialist counsellor reported that he presented with depressed mood and increasing stress regarding his prolonged detention.
20 May 2015	A DIBP Incident Report recorded that he was found unconscious after overdosing on his medication. IHMS advised that he had taken the overdose because he was depressed about being re-detained. He was transferred to hospital for treatment and was diagnosed with depression. He was placed on continuous SME observations following discharge.
9 June 2015	A DIBP Incident Report recorded that he self-harmed by banging his head against a wall. He was taken to hospital for assessment.
July 2015	IHMS advised that he presented with detention fatigue and frustration about his ongoing detention.
August 2015	IHMS advised that his mood issues were having a significant impact on his mental health and noted that separation from his sister and fiancée was the primary trigger.
5 February 2016	IHMS advised that his placement at Facility C was adversely affecting his mental health. IHMS reiterated he had self-harmed due to depression caused by his return to detention and noted his mood was having a significant impact on his mental health with separation from his sister and fiancée being a primary trigger.

Other matters

13 July 2015	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC) alleging his rights have been breached under several articles of the International Covenant on Civil and Political Rights (ICCPR). On 9 September 2015 DIBP provided a response to the AHRC. On 3 February 2016 the AHRC advised DIBP that Mr X's complaint under Article 6 of the ICCPR had been finalised but his complaints under Articles 7, 9, 10, 17 and 23 were still being considered.
20 August 2015	Mr X and his sister lodged a complaint with the Ombudsman's office about being transferred to Facility C when they have significant family and community ties in City D. This matter is currently under investigation.
26 August 2015	DIBP advised that Mr X and his sister requested to be transferred to Facility B. On 8 October 2015 DIBP advised them that this was not possible as there was no capacity at Facility B.

Information provided by Mr X

During an interview with Ombudsman staff at Facility C in April 2016 Mr X advised he had been living in the community for 18 months. He was initially granted a Bridging visa with work rights and was able to find employment as a cleaner, however following his second negative Protection visa decision his work rights were cancelled. He said living in the community on a Bridging visa was not easy but he and his sister managed to get by and at least they had their freedom. When he was in the community he followed 'all of the rules' and reported to the DIBP office every month as required. He said he could not understand why he had been re-detained when he had done nothing wrong.

Mr X claimed after he was re-detained he was placed under significant pressure to return to Country A voluntarily. But he said he and his sister cannot return because it is too dangerous and their mother, who is still in Country A, has told them to stay in Australia where they are safe.

Mr X advised he was very concerned about his sister's wellbeing since her transfer to Facility C. He said if they have to remain in detention they would like to be transferred to City D together to be closer to their support network and his sister's husband.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He has no outstanding matters before DIBP, the courts or tribunals and is on a removal pathway.

The Ombudsman notes that Mr X was transferred to Facility B on 14 May 2016 where he and his sister have family and community support.

Notwithstanding his recent transfer, in light of Mr X's ongoing mental health concerns, the Ombudsman recommends that consideration be given to granting Mr X a Bridging visa until removal action can be progressed.