

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	1991
Ombudsman ID	1002559
Date of DIBP's reports	28 May 2015 and 17 November 2015
Total days in detention	912 (at date of DIBP's latest report)

Detention history

19 May 2013	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after arriving on the Australia mainland aboard Suspected Illegal Entry Vessel 709 <i>Oswestry</i> , indicating that he arrived as a 'direct entry person'. ¹ He was transferred to Facility B.
21 May 2013	Mr X absconded from detention. On the same day he was re-detained under s 189(1) and transferred to Facility B.
2 July 2013	Transferred to Facility C.
25 January 2014	Transferred to Facility D.
12 June 2015	Transferred to Facility E.
29 September 2015	Transferred to Facility C.
28 October 2015	Transferred to Facility D.

Visa applications/case progression

25 June 2014	Lodged a Protection visa application. The Department of Immigration and Border Protection (DIBP) advised that as Mr X arrived in Australia as a 'direct entry person' he was not barred under s 46A from lodging a Protection visa application. DIBP further advised that following a legislative amendment, Mr X is only eligible for a temporary visa.
16 December 2014	Protection visa application refused.
24 December 2014	Appealed to the Refugee Review Tribunal (RRT).
16 June 2015	RRT affirmed original decision.
10 September 2015	Requested judicial review by the Federal Circuit Court (FCC).

¹ A maritime arrival to Australia's mainland who is seeking protection. Maritime arrivals who arrived as 'direct entry persons' after 13 August 2012 and before 20 May 2013 are not subject to the s 46A bar.

Health and welfare

8 November 2014	International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist who noted that he had depressive symptoms. The psychiatrist reported that Mr X did not require medication at that time and he was attending appointments with the mental health team (MHT).
10 January 2015	Presented to a general practitioner with stomach pain and was diagnosed with a digestive condition. He was prescribed with medication and referred to a gastroenterologist.
1 May 2015	Reviewed by a gastroenterologist who recommended Mr X's medication be increased and scheduled a gastroscopy. However, Mr X was unable to attend the procedure as he was transferred to Facility E. He was re-referred for a gastroscopy.
June 2015	Referred for an x-ray following ongoing back pain. Abnormalities were identified and he was referred for a computed tomography (CT) scan.
2 June 2015 – ongoing	IHMS advised that Mr X received support from the MHT for stress and anxiety following an alleged sexual assault on 23 May 2015.
12 August 2015	A CT scan identified minor disc changes. He was prescribed with pain relief medication and referred to an orthopaedic specialist.
3 September 2015 – 1 October 2015	Attended physiotherapy on 10 occasions for his back condition.
26 October 2015	IHMS reported that Mr X expressed increased stress and anxiety around his personal safety concerns. IHMS further advised that if the situation was not addressed it would likely be detrimental to Mr X's mental health.

Detention incidents

21 May 2013	A DIBP Incident Report recorded that Mr X was one of six detainees who absconded from detention. On the same day he was re-detained and transferred to Facility B.
23 May 2015	A DIBP Incident Report recorded that Mr X alleged that he was sexually assaulted by another detainee at Facility D. The alleged offender was transferred to a separate compound within Facility D and the matter was referred to the Australian Federal Police. No further information was provided.

Other matters

20 July 2015	DIBP advised that Mr X appeared before the Y Magistrates Court and was acquitted of charges related to his escape from detention on 21 May 2013.
11 September 2015	DIBP received a complaint from the Australian Human Rights Commission (AHRC) of behalf of Mr X. On 3 November 2015 DIBP provided its response to the AHRC.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.