

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 60 months (five years).

The first report 811/12 was tabled in Parliament on 22 August 2012 and the second report 1000761 was tabled in Parliament on 14 September 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1983
Ombudsman ID	1003463
Date of DIBP's reports	1 October 2015 and 3 May 2016 ¹
Total days in detention	1855 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1000761), Mr X has remained at Wickham Point Alternative Place of Detention.

Recent visa applications/case progression

13 April 2015	The Department of Immigration and Border Protection (DIBP) finalised the International Treaties Obligations Assessment (ITOA), determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
1 July 2015	Requested judicial review by the Federal Circuit Court (FCC).
1 October 2015	DIBP advised that Mr X is no longer considered a person of interest.
12 October 2015	The Minister withdrew from proceedings before the FCC and Mr X's case was remitted for reconsideration.
13 April 2016	DIBP finalised the ITOA, determining Mr X's case does engage Australia's <i>non-refoulement</i> obligations.
18 April 2016	The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application.
22 April 2016	DIBP invited Mr X to lodge a temporary visa application.

Other legal matters

11 July 2015	Mr X's appeal was dismissed by a Court of Criminal Appeal.
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¹ DIBP advised that it did not meet its statutory obligations in relation to Mr X due to unforeseen technical difficulties which precluded normal reporting procedures from being followed. DIBP further advised that substantial steps have been undertaken since then to prevent any recurrence of this issue.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received supportive counselling for anxiety, depression, insomnia and an adjustment disorder and was prescribed with anti-depressant medication. He attended torture and trauma counselling and is monitored by the mental health team.

IHMS further advised that Mr X attended physiotherapy and received treatment for lower back and knee pain.

Other matters

25 October 2011	DIBP was notified that Mr X had lodged a complaint with the Australian Human Right's Commission (AHRC). The Australian Human Rights Commission (AHRC) notified DIBP that Mr X had lodged a complaint. The AHRC finalised the investigation on 20 March 2014.
22 September 2015	The AHRC notified DIBP that Mr X had lodged a complaint. DIBP provided a response on 21 December 2015.

Ombudsman assessment/recommendation

Mr X was detained on 6 April 2010 after arriving in Australia aboard Suspected Illegal Entry Vessel *Geebung* and has been held in restricted detention for a cumulative period of over five years. On 13 April 2016 Mr X was found to be owed protection under the Refugee Convention.

On 18 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 22 April 2016 DIBP invited Mr X to apply.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental health prolonged detention may pose. Given Mr X's history of mental health concerns, the Ombudsman recommends that consideration be given to placing him in community detention while he awaits the resolution of his immigration status.