

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 a cumulative period of more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1982
Ombudsman ID	1003468
Date of DIBP's report	30 September 2015
Total days in detention	732 (at date of DIBP's report)

Detention history

11 May 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 327 <i>Firle</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island.
8 June 2012	Transferred to Wickham Point APOD.
17 July 2012	Transferred to Curtin Immigration Detention Centre (IDC).
13 September 2012	Granted a Bridging visa and released from detention.
31 January 2014	Mr X was re-detained following the expiry of his Bridging visa and transferred to Villawood IDC.
3 April 2014	Transferred to Curtin IDC.
26 August 2014	Transferred to Yongah Hill IDC.
22 October 2014	Transferred to Wickham Point APOD. ¹

Visa applications/case progression

4 September 2012	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
6 September 2012	Lodged a Protection visa application with an associated Bridging visa application.
13 September 2012	The Minister agreed to intervene under s 195A to grant Mr X a Bridging visa.
21 January 2013	Protection visa application refused.
29 January 2013	Appealed to the Refugee Review Tribunal (RRT).
7 June 2013	RRT affirmed original decision.

¹ DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

5 July 2013	Bridging visa expired.
23 July 2013	Granted a Bridging visa valid until 23 August 2013.
23 August 2013	Mr X's Bridging visa expired and he remained in the community as an unlawful non-citizen.
30 August 2013	Lodged an associated Bridging visa application.
31 January 2014	Mr X presented himself to the Department of Immigration and Border Protection's (DIBP) office seeking assistance as he claimed to be homeless. He was re-detained under s 189(1).
3 February 2014	Associated Bridging visa application refused.
10 July 2014	DIBP issued Mr X with a letter inviting him to comment on the unintentional release of personal information. ²
25 July 2014	Mr X provided his response and DIBP advised that it was assessing whether he had raised further protection related claims as a result of the privacy breach.
16 January 2015	Mr X was issued with a letter notifying him of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
10 June 2015	DIBP invited Mr X to comment on information relating to the ITOA.
22 July 2015	Mr X provided his response.
31 August 2015	Found not to be owed protection.
30 September 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ³ which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how this judgment will affect protection obligation processes.

Health and welfare

May 2012 – ongoing	International Health and Medical Services (IHMS) advised that during his induction health assessment Mr X was identified to have high blood pressure. He was provided with lifestyle education and prescribed with medication, with which he has reportedly been semi-compliant. Mr X's blood pressure readings have been consistently elevated since that time.
16 July 2012 – ongoing	Mr X disclosed a history of drug and alcohol abuse and requested to attend group therapy at Narcotics Anonymous, which he said had assisted him in the past. IHMS advised that Mr X had been able to attend three group therapy sessions while detained at Villawood IDC, but that his subsequent placements have made this too difficult to facilitate.

² 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.

³ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

9 February 2014 – ongoing	Mr X was reviewed by a psychiatrist and diagnosed with adjustment disorder, anxiety and major depression. The psychiatrist assessed that Mr X's mental state was likely to deteriorate rapidly if he remained in a detention centre. IHMS advised that Mr X was regularly reviewed by mental health professionals and reported feelings of low mood, isolation and paranoia. Psychological behavioural therapy was reportedly unsuccessful.
2 September 2014	Disclosed a history of torture and trauma and was referred for specialist counselling.
22 November 2014 – 24 February 2015	Attended four specialist counselling sessions.
29 January 2015	Prescribed with antidepressant medication, but declined the prescription.
13 July 2015 – ongoing	Attended an optometrist appointment and was noted to have elevated intraocular pressure, which can cause glaucoma. Subsequent testing confirmed that his condition will need to be monitored and Mr X was advised to return for a test in 12 months.
3 September 2015	Mr X declined any further treatment for his high blood pressure and was provided with education about the risks of non-treatment.
9 September 2015	IHMS reiterated the psychiatrist's assessment of February 2014 that Mr X's mental health was likely to deteriorate rapidly if he remained in a detention centre. IHMS further advised that this assessment was supported by the assessment of the Mr X's torture and trauma psychologist.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Mr X's case is affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP has advised that it is reviewing how this judgment will affect protection obligation processes.

The Ombudsman notes the advice from IHMS in September 2015 that Mr X is unable to attend Narcotics Anonymous sessions because of his current placement and that his mental health is likely to deteriorate rapidly if he remains in a detention centre. The Ombudsman recommends that consideration be given to granting a Bridging visa to Mr X while he awaits resolution of his immigration status.