

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 been in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1989
Ombudsman ID	1002916
Date of DIBP's reports	6 July 2015 and 1 January 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

1 August 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 398 <i>Darkin</i> . He was transferred to Phosphate Hill Alternative Place of Detention, Christmas Island.
8 August 2012	Transferred to Christmas Island Immigration Detention Centre (IDC).
24 August 2012	Transferred to Curtin IDC.
4 September 2012	Transferred to Wickham Point IDC.
24 October 2012	Transferred to Yongah Hill IDC.
7 November 2012	Granted a Bridging visa and released from detention.
9 October 2013	Following criminal charges he was re-detained under s 189 and transferred to Facility B.

Visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia after 13 August 2012 and were subject to the bar under s 46A of the <i>Migration Act 1958</i> .	
23 October 2012	A ministerial submission was referred to the former Minister for the possible grant of a Bridging visa under s 195A.
7 November 2012	The Minister agreed to intervene and on the same day Mr X was granted a Bridging visa and released from detention.
7 November 2012	The Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.
14 December 2012	Lodged a Protection visa application.
19 December 2012	Mr X's Bridging visa ceased and he became unlawful in the community.

19 February 2013	Bridging visa associated with his Protection visa application was granted.
12 June 2013	DIBP identified Mr X as a person of interest because of the outstanding criminal charges.
9 October 2013	Mr X's Bridging visa was cancelled and he was re-detained under s 189 after being charged with serious offences.
23 December 2013	Protection visa application refused.
3 January 2014	Appealed to the Refugee Review Tribunal (RRT).
13 March 2014	Mr X was issued with a letter notifying him of the unintentional release of personal information through DIBP's website. ¹
6 June 2014	RRT affirmed original decision.
11 June 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
9 July 2014	Requested judicial review of the RRT's decision by the Federal Circuit Court (FCC).
15 October 2014	Mr X's case in the FCC was adjourned pending the outcome of another case and any appeals in that case. ²
22 September 2015	The FCC dismissed Mr X's application.

Criminal matters

22 May 2013	Mr X was charged with serious offences involving violence.
23 October 2013	Appeared in the local court and granted bail.
9 November 2015	The Office of the Director of Public Prosecutions, State C, issued Mr X with a Criminal Justice Stay certificate.
4 April 2016	A trial date is scheduled to be heard at the D District Court.

Health and welfare

25 April 2014 – ongoing	International Health and Medical Services (IHMS) advised that Mr X was identified as having a history of torture and trauma. He attended several specialist counselling sessions, however, IHMS advised that between November 2014 and May 2015 he declined to attend 10 sessions.
28 April 2014	Mr X presented with leg and back pain. He was prescribed with pain relief and referred for physiotherapy.
15 June 2014	He was identified to have a chronic bowel infection, which was initially managed by his general practitioner. As symptoms continued he was referred to a gastroenterologist with an appointment scheduled for 2 September 2015.

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 *Minister for Immigration and Border Protection v WZAPN & Anor [2015] HCA 22.*

28 August 2014	Mr X was reviewed by an external psychiatrist who diagnosed him with post-traumatic stress disorder (PTSD) and recommended community detention.
22 September 2014 – 13 October 2014	Attended three physiotherapy sessions.
2 July 2015	IHMS reiterated to Mr X's psychiatric review of 28 August 2014 which noted that the restricted detention environment was exacerbating his mental health condition and recommended that he be transferred to a community detention setting.
5 August 2015 – 19 October 2015	Attended five specialist counselling appointments.
2 September 2015	Seen by a gastroenterologist who gave a possible diagnosis of giardia or amoebic dysentery pending further investigation. Another specialist consultation was scheduled for 28 October 2015 which Mr X declined to attend. No further follow up has been scheduled.
29 November 2015	IHMS advised that Mr X had declined further specialist counselling sessions. IHMS further advised that Mr X was not on any medication for the previously diagnosed PTSD but was aware of how to seek assistance from the mental health team. IHMS stated that there was no documented evidence to indicate that Mr X's health conditions or issues were likely to be adversely affected by his current placement.

Information provided by Mr X

During an interview with Ombudsman staff at Facility B on 10 November 2015 Mr X advised that his case manager had told him he would be removed to Country A because his immigration case had been finalised. Mr X queried his removal given that the hearing for his criminal case was on 4 April 2016 and DIBP had not considered the impact of the data breach on his case. He said his case manager was going to get back to him on the matter of the data breach.

Mr X indicated he had significant mental health issues and had nightmares about the Country A army attacking him. He attends a specialist counselling service for torture and trauma counselling.

He stated that he had no significant concerns with detention conditions at Facility B, except that there was no prayer room for people of his faith. He said that Serco officers were dealing with this issue.

Case status

Mr X was detained on 1 August 2012 after arriving in Australia and was released on a Bridging visa on 7 November 2012. He was re-detained on 9 October 2013 following criminal charges and has remained in restricted detention for a cumulative period of over two and a half years.

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

He has no matters before DIBP, the courts or tribunals and is on a removal pathway. However, he is the subject of a Criminal Justice Stay certificate in relation to outstanding onshore criminal matters and is unable to be removed until these matters are finalised. A trial date is scheduled for 4 April 2016.