

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the tenth s 486O report on Mr X who has remained in restricted immigration detention for more than 108 months (nine years). He remains the longest-serving detainee in immigration detention.

The previous reports are:

Report 568/09 tabled in Parliament on 18 November 2009
Report 587/10 tabled in Parliament on 12 May 2010
Report 610/10 tabled in Parliament on 17 November 2010
Report 637/11 tabled in Parliament on 15 June 2011
Report 683/12 tabled in Parliament on 31 October 2012
Report 1535/13 tabled in Parliament on 4 December 2013
Report 1001378 tabled in Parliament on 27 August 2014
Report 1001628 tabled in Parliament on 25 February 2015
Report 1002107 tabled in Parliament on 25 November 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	1961
Ombudsman ID	000510-O
Date of DIBP's reports	7 December 2015 ¹ and 6 June 2016
Total days in detention	3276 (at date of DIBP's latest report)

Summary of case history

Mr X has a criminal history in Australia dating from 1986. Early matters include convictions for grievous bodily harm, assault and damage to property.

He was granted a Protection visa in January 1996. A former Minister cancelled his Protection visa under s 501 of the *Migration Act 1958* in March 2003 after he was convicted of the manslaughter of his de facto spouse and sentenced to seven years imprisonment.

On release from prison on 18 July 2007 Mr X was transferred to immigration detention.

The Department of Immigration and Citizenship (DIAC) completed two International Treaties Obligations Assessments (ITOAs) in October 2007 and on 26 July 2011 which on both occasions found that Mr X's removal would breach Australia's non-refoulement obligations.

On 23 December 2008 Mr X lodged an application for a second Protection visa. On 29 May 2009 a delegate of the Minister refused the Protection visa application. The delegate found that Mr X had a well-founded fear of persecution for a convention reason but was not owed protection because he had been convicted of a particularly serious crime and was a danger to the community.

¹ DIBP's report of 7 December 2015 covers a period of approximately three months as the prior report was dated 1 September 2015, having been delayed due to a system failure.

The decision to refuse the Protection visa application was subsequently affirmed by the Administrative Appeals Tribunal (AAT) on 2 September 2010. Mr X unsuccessfully appealed the AAT decision to the Federal Court and the Full Federal Court. However, he was successful in the High Court which, on 10 April 2013 remitted Mr X's Protection visa application back to the AAT for reconsideration.

On 13 June 2013 the AAT set aside the decision of 29 May 2009 to refuse Mr X a Protection visa and the matter was referred to DIAC for reconsideration. Subsequently, on 13 November 2014 the Department of Immigration and Border Protection (DIBP) sent a submission to the former Minister for him to consider refusing the application under s 501.

On 24 March 2015 the Minister refused to grant Mr X a Protection visa under s 501.

In addition to consideration of protection matters and Protection visas, Mr X has also previously been considered for community detention and/or a Bridging visa.

Recent detention history

Since the Ombudsman's previous report (1002107), Mr X has remained at Facility B.

Recent visa applications/case progression

22 October 2015	DIBP identified Mr X's case for assessment against the guidelines under s 195A for possible referral to the Minister for consideration of a Bridging visa.
20 November 2015	DIBP advised Mr X that the Minister's decision of 24 March 2015 to refuse his application for a Protection visa under s 501 was affected by legal error. DIBP further advised Mr X that it was now giving fresh consideration to whether his application should again be refused under s 501. As part of this process DIBP served a Notice of Intention to Consider Refusal of the application under s 501 on Mr X on 20 November 2015.
8 April 2016	DIBP placed Mr X's referral for assessment against the s 195A guidelines on hold pending health advice and advised that the matter remained ongoing.

Health and welfare

International Health and Medical Services (IHMS) advised Mr X received ongoing follow-up from its mental health team as clinically indicated in relation to disturbed, impulsive and antisocial behaviour. IHMS reported an occasion in the latter part of 2015 where Mr X acknowledged his impulsive behaviour was unacceptable and indicated he would be more respectful.

IHMS advised that Mr X also received ongoing treatment and/or monitoring for physical conditions including chronic back pain, diabetes, high cholesterol and hypertension.

Mr X was reported to have refused to attend an external appointment to undergo an x-ray to further investigate his lower back pain as he refused to wear handcuffs.

IHMS listed an extensive range of medications prescribed to Mr X for his health conditions.

27 January 2016	A DIBP Incident Report recorded Mr X confirming he was pursuing food and fluid refusal.
14 April 2016	Made a threat of self-harm.

18 April 2016	Mr X advised IHMS that he was becoming increasingly frustrated in detention but he showed no risk of harm.
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Recent detention incidents

14 April 2016	A DIBP Incident Report recorded that a stabbing implement was allegedly found on Mr X during a search.
16 April 2016	A DIBP Incident Report recorded that Mr X allegedly informed a nurse in the IHMS mental health team that if any detainee or stakeholder got in his way or gave him a hard time, he would kill them and then kill himself.
2 June 2016	A DIBP Incident Report recorded that Mr X allegedly punched a hole in the wall in his accommodation and set it on fire, causing what was described as serious damage to the wall. Mr X was also reported to have created a disturbance following the fire. A further DIBP Incident Report recorded that on the same day, during a search of his room, he was also allegedly found to have three makeshift weapons.
DIBP Incident Reports also recorded that Mr X was allegedly involved in a large number of behavioural incidents of a minor nature. These included two incidents on 25 and 27 January 2016 in which he displayed abusive behaviour towards IHMS staff. IHMS advised he had not wanted to be watched taking his medication in accordance with protocol and had insisted on taking it back to his room.	

Ombudsman assessment/recommendation

Mr X has now been held in restricted detention for an unbroken period of more than nine years.

The Ombudsman notes that Mr X reportedly continues to exhibit aggressive and antisocial behaviour and to be involved in many alleged behavioural incidents, mostly minor but some of a serious or criminal nature. He also has a serious criminal record.

In addition to offences committed in the community, Mr X was convicted in 2012 and 2015 of further offences committed whilst in detention. On the first occasion no penalty was imposed and on the second occasion he was sentenced to a term of imprisonment which was suspended.

Mr X has also been involved in incidents of threatened and actual self-harm.

The Ombudsman does not consider that keeping Mr X in restricted immigration detention for the foreseeable future without making determined and exhaustive efforts to explore alternatives amounts to an acceptable de facto resolution of his case.

It is the Ombudsman's view that there is the risk that the longer Mr X remains in restrictive detention the lower the chance of an alternative placement or other arrangement succeeding.

In relation to matters not yet finalised at the date of DIBP's latest report, the Ombudsman recommends that processing of Mr X's Protection visa application and consideration of Mr X for a Bridging visa under s 195A be expedited if either of these matters has not yet been determined.