

**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 remained in restricted immigration detention for more than 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1002425-O
Date of DIBP's report	31 May 2016
Total days in detention	730 (at date of DIBP's report)

Detention history

1 June 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> after his release from criminal custody. He was transferred to Villawood Immigration Detention Centre (IDC).
11 September 2014	Transferred to Perth IDC.
15 September 2014 — 27 April 2015	Transferred four times between Yongah Hill IDC and Perth IDC.
4 December 2015	Transferred to Maribyrnong IDC.
13 January 2016	Transferred to Christmas Island IDC.
17 November 2016	Granted a Protection visa and released from detention.

Visa applications/case progression

Mr X arrived in Australia on 5 July 2009 on a Vocational Education and Training Sector visa, valid until 30 September 2011. On 27 September 2011 Mr X lodged a Remaining Relative visa application and was granted an associated Bridging visa, valid until 17 October 2013. Following the death of Mr X's sister, he no longer met the criteria for a Remaining Relative visa and his application was refused on 10 September 2013. On 3 April 2013 Mr X was sentenced to a term of 15 months imprisonment and was transferred to criminal custody.	
21 November 2013	Lodged a Protection visa application.
28 March 2014	Protection visa application was refused.
22 April 2014	Appealed to the Refugee Review Tribunal (RRT).
1 June 2014	Detained under s 189(1) upon release from criminal custody.
12 June 2014 and 23 September 2014	Lodged applications for Bridging visas which were refused.
19 August 2014	RRT remitted Mr X's case with the direction that Mr X satisfied the complementary protection criterion and was owed protection.
23 October 2014	The Department of Immigration and Border Protection (the department) issued Mr X a Notice of Intention to Consider Refusal (NOICR) of his

	Protection visa application under s 501. He provided a response on 27 November 2014.
21 June 2015	The Assistant Minister refused Mr X's Protection visa application under s 501 as he did not pass the character test.
13 November 2015	The department advised Mr X that his case had been identified as affected by legal error regarding the effect of s 197C and by the Federal Court judgment of 26 August 2015. ¹ He was advised that his Protection visa application was to be given fresh consideration as the Assistant Minister's refusal decision had no legal effect. On the same day the department issued Mr X an NOICR of his Protection visa application under s 501 on character grounds and invited him to comment.
14 December 2015	Mr X provided a response to the NOICR.
12 September 2016	Mr X's Protection visa application was referred to the Minister for consideration under s 501.
25 October 2016	The Minister chose not to exercise his discretion to refuse Mr X's Protection visa application under s 501. Mr X was notified of the Minister's decision on 31 October 2016.
17 November 2016	Granted a Protection visa.

Criminal history

December 2010	Mr X was convicted of assault and damaging property. He was placed on a good behaviour bond and fined \$550.
December 2011	Mr X was convicted of three driving offences. He was sentenced to a 10 month custodial term, was placed on a good behaviour bond and was fined \$1650.
April 2013	He was convicted of further driving offences and was sentenced to a 15 month custodial term.

Health and welfare

	International Health and Medical Services (IHMS) advised that Mr X was identified as hepatitis B positive and was monitored through regular blood tests and ultrasounds. He also received treatment for a shoulder injury and chronic leg pain and was prescribed with pain relief medication. IHMS further advised that on 20 January 2016 Mr X informed the mental health team (MHT) he was experiencing distress, was unmotivated and had increased anxiety as a result of past trauma. He was referred to an external specialist counselling service and was awaiting an appointment at the time of reporting.
10 September 2014	An Incident Report recorded that Mr X refused food and fluid to protest a pending transfer to a different facility.

¹ *AZO15 v Minister for Immigration and Border Protection.*

Detention incidents

January 2015	An Incident Report recorded that Mr X was one of a group of detainees protesting a pending transfer of detainees from Perth IDC to different facilities.
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Other matters

11 September 2015	Mr X lodged a complaint with the Ombudsman's office alleging that items of personal property were stolen from his accommodation. Following an investigation the Ombudsman provided Mr X with advice about progressing the matter with Serco. The complaint was finalised on 5 January 2016.
5 November 2015	The Australian Human Rights Commission (AHRC) notified the department of a complaint lodged by Mr X. On 14 December 2015 the department provided a response to the AHRC and the matter remains ongoing.
25 August 2016	Mr X lodged a complaint with the Ombudsman's office about his prolonged detention. Mr X was directed to follow the department's internal complaint process and invited to return to the Ombudsman's office if his complaint was unable to be resolved.

Case status

Mr X was granted a Protection visa on 17 November 2016 and was released from immigration detention.
