

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

Name	Mr X
Citizenship	Country A
Year of birth	1974
Ombudsman ID	1003473
Date of DIBP's report	7 October 2015
Total days in detention	735 (at date of DIBP's report)

Detention history

1 January 2006	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community and transferred to Maribyrnong Immigration Detention Centre (IDC). On the same day Mr X was granted a Bridging visa and released from detention.
3 June 2008	Re-detained under s 189(1) after living unlawfully in the community and transferred to Maribyrnong IDC.
14 December 2008	Absconded from detention while being escorted to hospital.
14 April 2014	Mr X remained in the community unlawfully until he was located by police and re-detained under s 189(1). He was transferred to Maribyrnong IDC.
28 August 2015	Transferred to Christmas Island IDC.
December 2015	Mr X was released from detention when he was involuntarily removed from Australia to Country A.

Visa applications/case progression

30 July 2001	Arrived in Australia as the holder of a Prospective Marriage visa.
13 September 2001	Granted a Spouse visa valid until 18 May 2005.
9 May 2005	Mr X's application for a further Spouse visa was refused after his partner withdrew her sponsorship.
19 May 2005 – 3 June 2008	Mr X remained in the community for over three years in which time he was granted 13 Bridging visas and lived unlawfully in the community for three periods, totalling 17 months, between Bridging visas.
7 April 2006	Lodged an application for a Child visa which was refused on 20 April 2006.
17 May 2006	Appealed to the Migration Review Tribunal (MRT).
8 January 2007	MRT affirmed original decision.
5 February 2007	Requested ministerial intervention under s 351.

14 March 2007	Mr X's case was referred on a first stage ministerial submission for consideration under s 351.
2 April 2007	The former Minister declined to intervene under s 351.
21 June 2007	Mr X made a further request for ministerial intervention under s 351, but was found not to meet the guidelines for referral.
3 June 2008	Mr X was located by police while living unlawfully in the community and re-detained under s 189(1).
18 June 2008	Lodged a Protection visa application.
20 June 2008	Lodged an associated Bridging visa application.
24 June 2008	Associated Bridging visa application refused.
11 July 2008	Protection visa application refused.
17 July 2008	Appealed to the Refugee Review Tribunal (RRT).
19 September 2008	RRT affirmed original decision.
1 October 2008	Mr X's case was referred on a ministerial submission for consideration under ss 195A and 197AB of a Removal Pending Bridging visa or community detention placement.
9 October 2008	The former Minister declined to intervene under ss 195A or 197AB.
12 December 2008	Referred on a first stage ministerial submission for consideration under s 417.
14 December 2008 – 14 April 2014	Mr X escaped from detention and remained in the community unlawfully until he was located by police during a roadside stop. He was re-detained under s 189(1).
20 January 2009	Mr X's referral for consideration under s 417 was closed after his escape from detention.
12 May 2014	Lodged a Bridging visa application.
14 May 2014	Bridging visa application refused.
15 May 2014	Appealed to the MRT.
27 May 2014	MRT affirmed original decision and referred Mr X to the Department of Immigration and Border Protection (DIBP) for consideration of a referral to the former Minister under s 351.
2 June 2014	Found to meet the guidelines for referral to the former Minister under s 351.
12 June 2014	Lodged an invalid Bridging visa application.
17 June 2014	Lodged an invalid Protection visa application. Mr X was informed that his invalid application would be treated as a request for ministerial intervention under s 48B.
19 June 2014	Found not to meet the guidelines for referral under s 48B.
7 July 2014	Mr X's case was referred on a ministerial submission for consideration under s 351. The former Minister declined to intervene the following day.

14 November 2014 – 18 November 2014	Mr X made a further request for ministerial intervention, but was found not to meet the guidelines for referral to the former Minister under s 351.
5 March 2015	Requested to be referred on a ministerial submission for consideration under s 417. Mr X's request was put on hold until his outstanding criminal proceedings were finalised.
13 April 2015	Issued with a Criminal Justice Stay Certificate (CJSC).
5 May 2015	Mr X was refused a Criminal Justice Stay visa.
27 August 2015	CJSC cancelled.
7 October 2015	DIBP advised that Mr X was on a removal pathway.
December 2015	Mr X was involuntarily removed from Australia.

Criminal history

7 October 2015	DIBP advised that Mr X had been convicted of several criminal offences in Australia including possession of a prohibited drug, criminal damage, carrying a weapon, recklessly causing injury and failing to comply with a community based order. He received custodial sentences and community based orders for the offences.
----------------	---

Health and welfare

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare. No significant ongoing physical health concerns were noted.	
29 April 2014 – 13 August 2015	IHMS advised that Mr X self-harmed on six occasions. A DIBP Incident Report recorded one additional incident of self-harm. On one occasion Mr X repeatedly banged his head against a wall and was subsequently hospitalised with a concussion.
11 May 2014 – 20 August 2015	IHMS advised that Mr X complained of chest pain and shortness of breath on four occasions and he was transferred to an emergency department twice. Tests indicated that his symptoms were not heart-related.
13 May 2014 – 8 December 2015	Mr X was reviewed by a psychiatrist and diagnosed with acute stress and adjustment disorder. He was prescribed with medication with which he was reportedly semi-compliant. Mr X initially declined assistance from the mental health team, but IHMS advised that he regularly attended counselling sessions from 12 May 2015 until his removal from Australia.

Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in numerous behavioural incidents including assaulting detention centre staff and other detainees, possessing weapons and contraband, damaging property, creating disturbances and behaving in an aggressive, abusive and threatening manner.	
4 May 2014 – 20 August 2015	DIBP Incident Reports recorded that unplanned use of force was required on 13 occasions to prevent Mr X from injuring himself and others.

12 October 2014	A DIBP Incident Report recorded that Mr X allegedly sexually assaulted a mental health nurse. No further information was provided.
-----------------	--

Other matters

2 June 2014	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 19 September 2014 the AHRC notified DIBP that Mr X had withdrawn his complaint.
25 August 2015	Mr X was charged with an offence. On 25 August 2015 the Victorian Director of Public Prosecutions filed a notice of discontinuance and closed the proceedings.
19 November 2015	Mr X lodged a complaint with the Ombudsman's office alleging that some of his personal possessions were lost during his transfer from Maribyrnong IDC to Christmas Island IDC on 28 August 2015. He requested that his property be returned to him before his removal from Australia or sent to his wife who still resides in Australia. This matter is currently under investigation by the Ombudsman's office.

Case status

Mr X was found not to be owed protection under the Refugee Convention and the complementary protection criterion. He was involuntarily removed from Australia to Country A in December 2015.
--