

**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 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1972
Ombudsman ID	1002249-O
Date of DIBP's reports	7 December 2015 and 12 July 2016 ¹
Total days in detention	953 (at date of DIBP's latest report)

Detention history

28 January 2011	Detained under s 189(1) of the <i>Migration Act 1958</i> following the cancellation of his visa. He was transferred to Villawood Immigration Detention Centre (IDC).
17 May 2012	Granted a Bridging visa and released from detention.
23 March 2015	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Villawood IDC.

Visa applications/case progression

27 January 2011	Arrived in Australia on a Tourist visa. During immigration clearance, Mr X was identified as a non-genuine visitor and his Tourist visa was cancelled under s 116. The Department of Immigration and Border Protection (DIBP) advised that Mr X was scheduled for removal on 28 January 2011, however this was cancelled after Mr X was transferred to hospital due to health concerns.
28 January 2011	Detained under s 189(1) and transferred to Villawood IDC.
31 January 2011	Lodged a Protection visa application with an associated Bridging visa application.
3 February 2011	Associated Bridging visa application deemed invalid.
4 February 2011	Requested judicial review by the Federal Magistrates Court (FMC) of the Tourist visa cancellation. The FMC affirmed the original decision on 2 June 2011.
11 April 2011	Protection visa application refused.

¹ In response to an inquiry from the Ombudsman's office about an apparent breach of reporting timeframes DIBP advised that it did not meet its statutory obligations in relation to providing Mr X's 30-month review under s 486N. It further advised that this was due to a system failure which precluded normal reporting procedures from being followed, and that it is working with DIBP's information technology systems to correct this issue.

27 April 2011	Appealed negative Protection visa application to the Refugee Review Tribunal (RRT). The RRT affirmed the original decision on 27 February 2012.
23 June 2011	Requested judicial review of the Full Federal Court (FFC) of the Tourist visa cancellation. The FFC affirmed the original decision on 20 October 2011.
17 November 2011	Requested judicial review by the High Court (HC) of the Tourist visa cancellation. The former Minister withdrew on 22 June 2012 and Mr X's case was remitted to the FFC.
19 March 2012	Requested judicial review by the FMC of the Protection visa refusal. The former Minister withdrew on 31 May 2012 and Mr X's case was remitted to the RRT.
14 May 2012	Mr X's case was referred on a ministerial submission under ss 195A and 197AB. The former Minister intervened under s 195A the following day.
17 May 2012	Granted a Bridging visa. DIBP advised that Mr X's Bridging visa was extended on three occasions and remained valid until 18 March 2015.
8 April 2013	RRT affirmed original decision to refuse Mr X's Protection visa application. Mr X requested judicial review by the Federal Circuit Court (FCC).
20 August 2013	The FFC concluded that the cancellation of Mr X's Tourist visa had been invalid. The Tourist visa was deemed to have ceased on 27 April 2011, three months after Mr X's arrival in Australia.
10 March 2014	FCC affirmed the original decision.
2 April 2014	Requested judicial review by the FFC of the Protection visa refusal. The FFC affirmed the original decision on 27 June 2014.
25 July 2014	Requested judicial review by the HC of the Protection visa refusal. The HC affirmed the original decision on 5 March 2015.
6 August 2014 and 5 November 2015	Found not to meet the guidelines for referral to the former and current Minister under ss 417 and 48B.
22 September 2014 and 31 March 2015	Lodged two Bridging visa applications, both of which were invalid.
20 March 2015	DIBP advised that Mr X lodged a complaint with the United Nations Committee Against Torture (UNCAT).
23 March 2015	Mr X was re-detained under s 189(1) following the expiry of his Bridging visa. On the same day, UNCAT issued an Interim Measures Request requesting that Australia refrain from removing Mr X to Country A while his complaint is under consideration.
23 December 2015	DIBP provided a response to UNCAT in relation to Mr X's complaint.
25 May 2016	Mr X's case was found to meet the guidelines for referral to the Minister under s 195A.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X receives treatment for type 2 diabetes and shoulder pain.</p> <p>IHMS further advised that Mr X receives treatment for symptoms of psychosis and schizoaffective disorder and continues to be prescribed with antidepressant and antipsychotic medication. He was reviewed by a psychiatrist on 13 April 2016 and improvements in his condition were noted, however the psychiatrist reported that prolonged detention may adversely impact his mental health and recommended he be considered for a community detention placement.</p>	
31 December 2011	A DIBP Incident Report recorded that Mr X was admitted to hospital under mental health legislation. No further information was provided.
2 January 2012	A DIBP Incident Report recorded that Mr X was admitted to hospital for mental health treatment. No further information was provided.
30 March 2015	A DIBP Incident Report recorded that Mr X threatened self-harm.

Other matters

22 September 2015 – ongoing	DIBP was notified that Mr X had lodged a complaint with the Australian Human Rights Commission. DIBP provided responses on 3 November 2015 and 13 April 2016.
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Ombudsman assessment/recommendation

<p>Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.</p> <p>On 5 March 2015 UNCAT issued an Interim Measures Request to prevent Mr X from being removed from Australia. Mr X remains detained at Villawood IDC while his complaint is considered.</p> <p>The Ombudsman notes advice from IHMS that prolonged restricted detention may adversely impact on Mr X's mental health. In light of this advice, the Ombudsman recommends that consideration be given to transferring Mr X to community detention while he awaits the resolution of his complaint.</p> <p>The Ombudsman further notes that s 486N(1)(b) records the Secretary of DIBP's obligation to report to the Commonwealth Ombudsman within 21 days after the detention reporting time.</p> <p>In the case of DIBP's reviews for Mr X, the Ombudsman notes with concern that DIBP advised that it did not meet its statutory reporting timeframes due to a system failure which precluded normal reporting procedures from being followed.</p> <p>The Ombudsman further notes that DIBP advised that it is working with DIBP's information technology systems to correct this issue.</p>
