

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

*Under s 486O of the Migration Act 1958*

This is the sixth s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 60 months (five years). The previous reports are:

569/09 tabled in Parliament on 18 November 2009

586/10 tabled in Parliament on 12 May 2010

611/10 tabled in Parliament on 9 February 2011

653/11 tabled in Parliament on 23 November 2011.<sup>1</sup>

This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1973
<b>Ombudsman ID</b>	000513-O
<b>Date of DIBP's reports</b>	31 December 2015 and 30 June 2016
<b>Total days in detention</b>	1822 (at date of DIBP's latest report)

### Recent detention history

20 September 2011	Granted a Return Pending Bridging visa (RPBV) and released from detention.
14 July 2015	Re-detained under s 189(1) of the <i>Migration Act 1958</i> upon his release from prison. He was transferred to Facility A.
23 September 2015	Transferred to Facility B.

### Recent visa applications/case progression

19 September 2011	Following prolonged discussions between the Australian and Country A governments regarding the issue of a travel document for Mr X's removal to Country A, the former Minister agreed to intervene under s 195A and grant Mr X a Return Pending Bridging visa (RPBV).
20 September 2011	Granted a RPBV and released from detention.
18 October 2011	Mr X withdrew his application to the High Court which sought a declaration that his detention was unlawful.
1 December 2014	Following further criminal convictions and reimprisonment, Mr X was issued with a Notice of Intention to Consider Cancellation (NOICC) of his RPBV under s 501.
13 July 2015	Mr X's RPBV was cancelled under s 501.
14 July 2015	Mr X was re-detained upon his release from prison.

<sup>1</sup> Mr X's fourth and fifth s 486O reports were combined and tabled as one report.

31 December 2015	DIBP advised that Mr X had no outstanding matters before DIBP or the courts and was on a removal pathway, but his removal was protracted as the government of Country A does not recognise Mr X as a citizen of Country A and DIBP's efforts to obtain a travel document for Mr X have been unsuccessful.
30 June 2016	DIBP advised that it continues to work with the government of Country A to obtain a travel document for Mr X and that he is on an involuntary removal pathway.

**Criminal history**

DIBP advised that between April and May 2014, while in the Australian community on a RPBV, Mr X was found guilty of common assault, giving a false name, affray, possessing a prohibited drug and remaining within the vicinity of licensed premises as an excluded person. He then served a further term of imprisonment.

On 31 December 2015 DIBP further advised that Mr X had been identified as a person of interest in relation to unspecified criminal matters.

**Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X had a history of left knee pain predating its last contact with him in 2011. It stated that he had undergone surgery in 2010 and the surgeon had commented that Mr X had advanced arthritis of his left knee with poor prognosis. The surgeon had also advised that Mr X would need a knee replacement in the future. He has been referred to an orthopaedic specialist and is regularly reviewed by the general practitioner for pain management.

**Other matters**

In 2014 the Australian Human Rights Commission (AHRC) tabled a report in Parliament in relation to a complaint Mr X had lodged with the AHRC in August 2010.

### **Ombudsman assessment/recommendation**

Mr X has been in restricted detention for a cumulative period of more than five years. DIBP has advised that he has no outstanding matters before DIBP or the courts and is on an involuntary removal pathway.

The Ombudsman notes that DIBP has advised that the Australian Government has been attempting without success to obtain a travel document from the authorities of Country A to effect Mr X's removal since April 2008. The Ombudsman also notes that DIBP advised that the government of country A does not recognise Mr X as a citizen of Country A.

The Ombudsman further notes that Mr X is a person of interest to DIBP on account of onshore criminal matters.

Without the Country A Government recognising Mr X as a Country A citizen and while he remains a person of interest to DIBP, Mr X appears likely to remain in a restrictive form of immigration detention for an indefinite period.

The Ombudsman notes the Government's duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose.

The Ombudsman recommends, unless there is a prospect of effecting Mr X's removal in the near future, that the Government actively research possible options other than restricted immigration detention with a view to finding one which both manages any risk that Mr X poses to the community and meets its duty of care to him.