

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

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1975
<b>Ombudsman ID</b>	1002336-O
<b>Date of DIBP's reports</b>	8 March 2016 and 6 September 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

**Detention history**

9 March 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
18 January 2015	Transferred to Yongah Hill IDC.
10 September 2015	Transferred to Christmas Island IDC.
16 October 2015	Transferred to Facility B.

**Visa applications/case progression**

10 March 2006	Arrived in Australia on a Vocational Education and Training Sector (VETS) visa.
12 August 2006	VETS visa was automatically cancelled under s 137J of the <i>Migration Act 1958</i> . On 11 April 2007 the automatic cancellation was reversed due to a defective s 20 notice.
5 June 2007 and 12 May 2008	Granted two further VETS visas with the second valid until 3 May 2009.
19 January 2010	Mr X remained unlawfully in the community until he was located by police and issued with a Criminal Infringement Notice for shoplifting.
19 January 2010 – 15 November 2013	Granted multiple Bridging visas with the last valid until 13 December 2013.
1 March 2010	Lodged a Protection visa application.
11 June 2010	Protection visa application refused.
16 June 2010	Appealed to the Refugee Review Tribunal (RRT).
24 June 2011	RRT affirmed original decision.
7 July 2011	Found not to meet the guidelines for referral to the former Minister under s 417.

29 July 2011	Requested judicial review of the RRT decision by the Federal Magistrates Court (FMC).
1 November 2011	FMC dismissed the application.
23 November 2011	Appealed to the Federal Court (FC).
23 February 2012	FC dismissed the appeal.
26 April 2012	Found to meet the guidelines for referral to the Minister under s 417, however, the former Minister declined to intervene.
Date not provided	The Department of Immigration and Border Protection (DIBP) determined that Mr X's case was affected the Full Federal Court decision of 3 July 2013 <sup>1</sup> which found that s 48A does not prevent a person from making a further Protection visa application on complementary protection grounds when their first application was refused before the commencement of the complementary protection provisions on 24 March 2012.
20 July 2012	Found not to meet the guidelines for referral to the former Minister under s 48B.
24 September 2013	Found not to meet the guidelines for referral to the former Minister under s 417.
9 March 2014	Mr X was detained under s 189(1) following his release from criminal custody.
19 March 2014	Lodged a second Protection visa application with an associated Bridging visa application.
21 March 2014	Associated Bridging visa application refused.
24 March 2014	Appealed to the Migration Review Tribunal (MRT) against the refusal of the Bridging visa. The MRT affirmed the original decision on 2 April 2014.
5 May 2014 – 17 August 2016	Mr X lodged seven Bridging visa applications, all of which were refused. He appealed to the MRT on four occasions and the original decisions were upheld.
10 June 2014	Protection visa application refused.
16 June 2014	Appealed to the RRT.
28 August 2014	RRT affirmed original decision.
2 September 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
18 September 2014	Requested judicial review of the RRT's decision by the Federal Circuit Court (FCC).
18 November 2015	The FCC remitted Mr X's case for reconsideration.
8 December 2015	The Minister appealed to the Federal Court (FC).
4 May 2016	The FC reserved judgment.

<sup>1</sup> SZGIZ v Minister for Immigration and Citizenship [2013] FCAFC 71

### Criminal history

DIBP advised that Mr X was convicted of multiple driving offences between 16 July 2008 and 18 March 2010.	
13 May 2009	Mr X was convicted of two charges of using a false instrument and placed on an 18-month good behaviour bond.
10 December 2013	Mr X was convicted of driving while disqualified and sentenced to nine-months in prison with a non-parole period of five months.
10 February 2014	Mr X's earliest date of release was brought forward to 9 March 2014.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X receives treatment for multiple complex mental health concerns, including depression, adjustment disorder, obsessive compulsive disorder and a history of torture and trauma. On 1 February 2016 IHMS reported that Mr X displayed symptoms of detention fatigue, insomnia and depressive symptoms and was reviewed by a psychiatrist. His condition continues to be monitored by the IHMS mental health team.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health conditions, including gastroenterological concerns and chronic lower back pain. He was referred to a podiatrist on 27 July 2016.</p>	
18 December 2014	A DIBP Incident Report recorded that Mr X threatened self-harm.

### Detention incidents

17 December 2014	A DIBP Incident Report recorded that Mr X allegedly behaved inappropriately towards a female detainee. No further information was provided.
------------------	---

### Other matters

11 April 2016	Mr X lodged a complaint with the Ombudsman's office in relation to the behaviour of Serco officers. Following an investigation, both DIBP and the Ombudsman's office identified issues with Serco's internal investigation procedures. The complaint was finalised on 14 July 2016.
---------------	---

### Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. At the time of DIBP's latest review Mr X was awaiting the outcome of judicial review.
--