

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1973
<b>Ombudsman ID</b>	1003221
<b>Date of DIBP's reports</b>	14 August 2015 and 11 February 2016
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

28 January 2008	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).
12 August 2008	Granted a Bridging visa valid to 28 January 2014 and released from detention.
26 February 2014	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Villawood IDC.
8 April 2014	Transferred to Wickham Point Alternative Place of Detention (APOD).

### Visa applications/case progression

12 January 2006	Arrived in Australia as the holder of a Business (Short Stay) visa valid until 12 April 2006.  The Department of Immigration and Border Protection (DIBP) advised that Mr X resided in Australia with his wife, Ms Y, who entered Australia on a fraudulent passport under the name of Ms Z (date of arrival not provided).
13 February 2008	Lodged a Protection visa application.
14 February 2008	Attended an interview in relation to his Protection visa application and lodged an associated Bridging visa application.
22 February 2008	Associated Bridging visa application refused.
28 February 2008	Protection visa application refused.
4 March 2008	Appealed to the Refugee Review Tribunal (RRT).
9 May 2008	RRT affirmed original decision.
3 June 2008	Requested judicial review by the Federal Magistrates Court (FMC).
8 August 2008	Lodged a Bridging visa application.

12 August 2008 – 1 December 2010	Granted multiple consecutive Bridging visas.
17 September 2008	FMC affirmed original decision.
4 October 2008	Found not to meet the guidelines for referral to the former Minister under s 48B.
29 June 2009	Referral to the former Minister under s 417 not considered.
8 February 2010 and 25 November 2010	Found not to meet the guidelines for referral to the former Minister under s 48B.
6 December 2010	Referral to the former Minister under s 417 not considered.
28 January 2014	Bridging visa expired and Mr X remained living in the community unlawfully.
11 April 2014	DIBP notified Mr X that his case was affected by the Federal Court's decision of 3 July 2013 <sup>1</sup> and he could lodge a further Protection visa application.  Mr X was included as a dependant on his wife's Protection visa application with an associated Bridging visa application, lodged under the name of Ms Z.
15 April 2014	Associated Bridging visa application refused.
21 August 2014	Ms Z's Protection visa application was refused.
28 August 2014	Appealed to the RRT.
1 May 2015	RRT affirmed original decision.
3 June 2015	Requested judicial review by the Federal Circuit Court (FCC).
11 September 2015	FCC dismissed Ms Z's application for judicial review.
14 October 2015	Ms Z included Mr X on a request for ministerial intervention under ss 417 and 48B.
4 November 2015	Their case was found not to meet the guidelines under s 48B.
19 November 2015	Mr X and Ms Z's case was referred on a ministerial submission for consideration under s 417.
29 November 2015	The Minister declined to intervene under s 417.
31 December 2015	Mr X included Ms Z on a request for ministerial intervention under ss 417 and 48B.
2 February 2016	Found not to meet the guidelines for referral to the Minister under ss 417 and 48B.

### **Criminal matters**

20 October 2014	Mr X appeared before the B Magistrates Court after he allegedly assaulted a Serco officer at Wickham Point APOD. DIBP advised that the matter was adjourned.
15 March 2015	He was acquitted of all charges.

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

### Health and welfare

January 2008 – ongoing	International Health and Medical Services advised that Mr X reported that he had previously been diagnosed with hepatitis B. He was provided with a treatment plan and monitored as per state policy.
3 April 2014	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
4 September 2014	A DIBP Incident Report recorded that Mr X threatened self-harm.
September 2015	Routine pathology testing indicated that his liver function was stable.
November 2015	Mr X declined to attend routine liver testing, stating that he did not wish to be handcuffed during the escort as per DIBP's policy. IHMS advised that he was monitored as per his care plan.

### Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in numerous behavioural incidents including aggressive and abusive behaviour and assaulting detention centre staff and other detainees.

### Other matters

22 December 2010	Mr X lodged a complaint with the United Nations Committee against Torture (UNCAT) alleging that his involuntary removal from Australia would be in breach of Australia's <i>non-refoulement</i> obligations.
14 January 2011	UNCAT issued an Interim Measures Request (IMR) requesting that Australia refrain from returning Mr X to Country A while his complaint is being considered.
19 April 2012	The Attorney-General's Department requested that the UNCAT lift the IMR.
16 April 2015	The Attorney-General's Department provided the UNCAT with further information about Mr X's immigration status and requested that the committee finalise their complaint.
22 July 2015	DIBP was notified that UNCAT had suspended Mr X's IMR while his Protection claims were being reassessed.
11 February 2016	DIBP advised that because Mr X has been found not to be owed protection, the Attorney-General's Department will prepare advice requesting that the IMR be lifted in order to process Mr X's removal from Australia.

### Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

UNCAT has issued an IMR request in relation to Mr X. DIBP advised that the Attorney-General's Department is preparing advice to UNCAT confirming that Mr X's immigration matters have been finalised and requesting that the IMR be lifted in order to progress his removal from Australia.