

**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 42 months (three and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1986
<b>Ombudsman ID</b>	1002212-O
<b>Date of DIBP's reports</b>	4 November 2015 and 9 May 2016 <sup>1</sup>
<b>Total days in detention</b>	1288 <sup>2</sup> (at date of DIBP's latest report)

**Detention history**

The Department of Immigration and Border Protection (DIBP) advised that between 2005 and 2014 Mr X was subject to periods of criminal custody between and in one case concurrently with, periods of immigration detention. The dates of Mr X's criminal custody were not provided.	
7 September 2005	Detained under s 189(1) of the <i>Migration Act 1958</i> following his arrest on 21 August 2005. He was held in a remand centre.
8 December 2005	Granted a Bridging visa and released from immigration detention but remained in criminal custody.
21 February 2007	Released from criminal custody and re-detained under s 189(1). He was transferred to Facility B.
27 November 2007	Granted a Bridging visa and released from immigration detention.
12 January 2011	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility B.
26 August 2011	Granted a Bridging visa and released from immigration detention.
15 May 2012	Arrested and transferred to a correctional facility.
19 June 2014	Re-detained under s 189(1) following his release from criminal custody on 20 May 2014. He was transferred to Facility B.

<sup>1</sup> DIBP advised that it did not meet its statutory obligations in relation to providing Mr X's 24-month and 30-month reviews under s 486N. It further advised that this was due to system-related administrative errors and that it is working with DIBP's information technology systems to correct this issue and enhance its standard operating procedures.

<sup>2</sup> DIBP advised that it had miscalculated the days in detention reported in Mr X's 30-month review as a result of a change in departmental IT systems, which had not taken into account Mr X's days in detention in 2005. DIBP further advised it was continuing to investigate the matter to establish whether this period of detention should be included for the purposes of s 486N reporting.

## Visa applications/case progression

<p>Mr X arrived in Australia on 23 April 1991 as a child dependant on a Diplomatic visa. He was granted four further Diplomatic visas, the last of which expired in August 2005 at which time he was detained following criminal charges.</p> <p>Mr X was included as a dependant on his mother's application for a Temporary Business visa lodged in April 2006. His application was refused under s 501 in October 2008 and he exercised his review rights with appeals to the Administrative Appeals Tribunal (AAT) and Federal Court (FC). In November 2011 the Department of Immigration and Citizenship reconsidered and refused Mr X's application on the basis that he was not a member of the family unit of a person who held a Temporary Business visa. He appealed to the Migration Review Tribunal (MRT) but the outcome remained unchanged.</p> <p>Between August 2005 and June 2014 Mr X was held in criminal custody on several occasions and was granted multiple Bridging visas in association with his visa application and to regularise his immigration status while in criminal detention.</p>	
6 September 2012	Lodged an application for a Partner visa which was also an application for a Partner (Residence) visa.
22 May 2015	Partner visa application was refused under s 501.
11 June 2015	Appealed to the AAT.
23 June 2015	Requested judicial review by the FC of the decision to refuse his Partner visa application under s 501.
13 July 2015	The AAT determined it had no jurisdiction to consider the matter.
12 August 2015	The FC dismissed the application for judicial review.
22 September 2015	Lodged a Protection visa application.
1 February 2016	Protection visa application refused.
3 February 2016	Appealed to the AAT.
4 April 2016	The AAT affirmed the original decision but referred Mr X's case to DIBP for possible consideration under s 417. DIBP advised that it had initiated a ministerial submission and the matter remained ongoing.

## Criminal history

<p>Between 2004 and 2005 Mr X was convicted of numerous criminal offences including inflicting bodily harm and assorted dangerous driving charges.</p>	
21 August 2005	Arrested and charged with aggravated robbery. He was convicted and sentenced to four years imprisonment with a non-parole period of 18 months.
16 May 2008	Arrested and charged with aggravated robbery. He was convicted and sentenced to five years imprisonment with a non-parole period of three years and nine months.
27 September 2012	Convicted of a variety of driving offences including drink driving and obstructing and/or resisting a public official.
20 May 2014	Granted parole and released from criminal custody.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was diagnosed with chronic hepatitis C and his liver function is monitored regularly.

Mr X also presented with depressive symptoms and feelings of distress in relation to his prolonged detention and was referred for counselling.

## Other matters

Mr X married his Australian citizen partner of eight years in March 2012 and they have an Australian citizen child.

DIBP's review dated 4 November 2015 advised that Mr X's parents were residing in Australia on valid visas and that Mr X has a sister who is an Australian citizen.

## Information provided by Mr X

During an interview with Ombudsman staff at Facility B in December 2015 Mr X advised he felt depressed and spent most of the day consumed by negative thoughts. He had not found IHMS to be helpful and claimed IHMS staff had advised DIBP of information provided in confidence which he then had to account for.

He said he felt a sense of utter hopelessness and missed his partner and three-year-old daughter tremendously as they lived in City D and were only able to visit him once a month.

## Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. The AAT referred Mr X's case to DIBP for possible consideration under s 417 and DIBP has initiated a ministerial submission.

The Ombudsman 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.

In the case of DIBP's reviews on Mr X, the Ombudsman notes with concern that DIBP advised that it did not meet its statutory reporting timeframes due to an information technology error which precluded normal reporting procedures from being followed.

The Ombudsman further notes that DIBP advised that it is working with DIBP's information technology systems to correct this issue and makes no recommendations in this report.