

## 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 remained in restricted immigration detention for more than 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1985
<b>Ombudsman ID</b>	1003166
<b>Date of DIBP's report</b>	27 July 2015
<b>Total days in detention</b>	732 (at date of DIBP's report)

### Detention history

25 July 2013	Upon release from criminal custody Mr X was detained under s 189 of the <i>Migration Act 1958</i> and transferred to Villawood Immigration Detention Centre (IDC).
30 March 2015	Transferred to Christmas Island IDC.
7 November 2015	Mr X was released from detention when he voluntarily departed Australia and returned to Country A.

### Visa application/case progression

9 October 2005	Arrived in Australia as the holder of a Vocational Education and Training Sector (VETS) visa valid until 5 March 2007.
3 March 2006	Lawfully departed Australia.
12 May 2006	Returned to Australia as the holder of a VETS visa.
26 May 2006	Mr X was issued with a non-compliance notice after he breached his visa conditions by not attending school. On the same day his VETS visa was cancelled under s 137J.
6 March 2007	Mr X's VETS visa expired and he became an unlawful non-citizen.
13 June 2007	Mr X's visa cancellation was affected by case law relating to administrative errors and his VETS visa cancellation was reversed.
5 September 2008	Mr X was arrested and held in criminal custody.
19 December 2008	Mr X was released from prison on parole. On the same day he was granted a Bridging visa in order to attend his court proceedings.
24 December 2008	Granted a Bridging visa valid until 15 January 2009.
22 July 2009	The Attorney General's Department (AGD) issued Mr X with a Criminal Justice Stay Certificate (CJSC). The Department of Immigration and Border Protection (DIBP) advised that a second CJSC was issued on 29 July 2009 following an administrative error.

7 August 2009	The AGD issued Mr X with a Criminal Justice Stay visa (CJSV).
12 November 2010	Mr X was convicted of his charges and sentenced to five years imprisonment with a non-parole period of three years.
12 August 2013	Lodged a Protection visa application with an associated Bridging visa application.
13 August 2013	Bridging visa application was referred for consideration under s 501.
29 August 2013	Attended an interview in relation to his Protection visa application.
23 September 2013	Protection visa application refused.
1 October 2013	Appealed to the Refugee Review Tribunal (RRT).
30 October 2013	Bridging visa application was not refused under s 501.
5 November 2013	Bridging visa application refused under the <i>Migration Regulations 1994</i> provisions.
24 December 2013	RRT affirmed original decision.
3 January 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
5 February 2014	Requested judicial review by the Federal Circuit Court (FCC).
12 March 2014	Mr X was notified of the unintentional release of personal information through DIBP's website. <sup>1</sup>
15 July 2014	Mr X was invited to provide information in relation to the privacy breach.
21 July 2014	Mr X provided his response and DIBP advised that it was assessing whether he had raised further protection related claims as a result of the privacy breach.
24 July 2014	Mr X's CJSC and CJSV were cancelled under ss 162 and 164.
14 November 2014	FCC affirmed original decision.
14 January 2015	Mr X was issued with a letter notifying him of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
17 March 2015	Mr X was invited to provide information in relation to the ITOA.
13 April 2015	Found not to be owed protection.
21 April 2015	Requested judicial review by the FCC in relation to the ITOA. He was scheduled to appear before the FCC on 4 December 2015.
7 November 2015	Mr X voluntarily departed Australia.

<sup>1</sup> In a media release dated 19 February 2014 the former Minister advised that an immigration detention statistics report was released on DIBP's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as DIBP became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by DIBP.

### **Criminal history**

5 September 2008	Mr X was arrested and charged with actual bodily harm and taking with intent to gain advantage. He was held in criminal custody.
19 December 2008	Released from criminal custody on bail.
12 November 2010	Mr X was convicted of both charges and sentenced to five years imprisonment with a non-parole period of three years with time served.
25 July 2013	Released from prison on parole.

### **Health and welfare**

International Health and Medical Services (IHMS) provided details of Mr X's health and welfare while in detention. No significant ongoing physical health concerns were noted.	
13 April 2015	Mr X presented with symptoms of frustration, anger and depressed mood. IHMS advised that prior to his departure from Australia, he attended counselling with the mental health team on a weekly basis.

### **Other matters**

DIBP advised that Mr X was the holder of an expired Country A passport.
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### **Case status**

Mr X voluntarily departed Australia on 7 November 2015 and returned to Country A.
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