

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).

Name	Mr X
Citizenship	Country
Year of birth	1963
Ombudsman ID	1002980
Date of DIBP's reports	21 July 2015 and 8 January 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

21 July 2011	Detained under s 189 of the <i>Migration Act 1958</i> after he was found living unlawfully in the community by the New South Wales (NSW) Police. He was transferred to Villawood Immigration Detention Centre (IDC).
20 September 2011	Transferred to Sydney Immigration Residential Housing (IRH).
11 November 2011	Absconded from immigration detention.
31 October 2013	Re-detained and transferred to Villawood IDC.
16 June 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). ¹

Visa applications/case progression

23 June 2008	Mr X arrived in Australia on a Student Guardian visa valid until 31 December 2008. Mr X was located (date not provided) after living unlawfully in the community following the expiry of his Student Guardian visa. He was granted a Bridging visa on departure grounds valid until 30 November 2009.
25 November 2010	The NSW Police located Mr X living unlawfully in the community. The Department of Immigration and Citizenship granted him a further Bridging visa valid for one day on the grounds that he intended to apply for a substantive visa that day. Mr X did not lodge a substantive visa application.
1 August 2011	Lodged a Protection visa application with an associated Bridging visa application.
2 August 2011	Associated Bridging visa application was invalid. Mr X appealed to the Migration Review Tribunal (MRT).
9 August 2011	MRT affirmed the decision to refuse the Bridging visa application.

¹ On 16 December 2015 Mr X advised Ombudsman staff that he is accommodated in a compound for families and couples with his son and grandson.

15 August 2011	Protection visa application refused.
29 August 2011	Appealed to the Refugee Review Tribunal (RRT).
9 December 2011	RRT affirmed original decision.
15 December 2011	Found not to meet the guidelines for referral to the former Minister under s 417.
6 November 2013	Lodged a further Protection visa application with an associated Bridging visa application. The Department of Immigration and Border Protection (DIBP) advised that Mr X's case was affected by the Full Federal Court's judgment of 3 July 2013. ² This found that s 48A did not prevent a person from making another Protection visa application on complementary protection grounds where the first application was made and refused before the incorporation of the complementary protection provisions into Protection visa processing.
15 November 2013	Associated Bridging visa application refused.
26 February 2014	Appealed to the MRT against the refusal of the Bridging visa application. The MRT affirmed the decision on 11 March 2014.
12 August 2014	DIBP notified Mr X of the unintentional release of personal information through DIBP's website. ³ He provided a response on 21 August 2014.
8 January 2015	Protection visa application refused.
13 January 2015	Appealed to the RRT.
9 February 2015	RRT affirmed original decision.
12 February 2015	Found not to meet the guidelines for referral to the Minister under s 417.
26 February 2015	Requested judicial review of the RRT decision by the Federal Circuit Court (FCC).
6 May 2015	The FCC dismissed the application.
15 May 2015	Mr X appealed the FCC's decision to the Federal Court (FC).
24 November 2015	The FC dismissed the appeal.
8 January 2016	DIBP advised that it was progressing Mr X's involuntary removal from Australia.

² SZGIZ v Minister for Immigration and Citizenship [2013] FCAFC 71.

³ 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.

Health and welfare

9 September 2011 – 20 September 2011	<p>International Health and Medical Services (IHMS) advised that Mr X was taken by ambulance to a hospital emergency department where a computed tomography (CT) scan revealed he had suffered a stroke. Mr X remained in intensive care and when stable was transferred to a ward where he received rehabilitation through physiotherapy and occupational therapy.</p> <p>He was diagnosed with a possible cerebral vessel disease and on 20 September 2011 he was discharged with residual arm and leg weakness.</p>
11 November 2011 – 31 October 2013	<p>IHMS had no records of Mr X's health and welfare during the period he had absconded from detention.</p>
November 2013	<p>Following Mr X's return to detention he was referred to a hospital neurology department. He saw a neurologist on multiple occasions and underwent extensive investigations into his condition.</p>
30 April 2014	<p>Prescribed with medication to treat chronic headaches caused by his cerebral condition.</p>
July 2015	<p>Following Mr X's transfer to Wickham Point APOD in June 2015 he was referred to a local hospital for continuation of his care.</p>
12 July 2015	<p>IHMS advised the diagnosis of a possible cerebral vessel disease was under review but extensive blood vessel disease was apparent.</p>
21 August 2015	<p>Diagnosed with high cholesterol and prescribed with medication. The general practitioner (GP) monitored Mr X's condition.</p>
21 August 2015 – September 2015	<p>After complaining of urinary symptoms, Mr X was referred for pathology tests and an ultrasound scan. He also required two CT scans. The results identified an atrophic right kidney and a lesion which was consistent with a benign liver tumour. IHMS advised that the GP did not indicate whether any further investigations or treatment were required.</p>

Detention incidents

11 November 2011	<p>A DIBP Incident Report recorded that Mr X escaped from Sydney IRH.</p>
22 February 2015	<p>A DIBP Incident Report recorded that Mr X was among a group of 25 detainees who allegedly became aggressive and blocked access to the IHMS building.</p>
23 February 2015	<p>A DIBP Incident Report recorded that Mr X was among a group of detainees who allegedly caused a major disturbance in the community area of Villawood IDC. Spontaneous use of force was used on Mr X to prevent him from causing further damage to property.</p>

Other matters

8 January 2016	<p>DIBP advised that Mr X had included his adult son, Mr Y, and his son's wife, Ms Z, as dependants on his most recent Protection visa application. Mr Y and Ms Z are the subjects of Ombudsman report 1002211-O.</p> <p>DIBP further advised that Mr X's son and daughter-in-law had no outstanding matters before DIBP, the courts or tribunals and have been referred for removal action.</p>
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Information provided by Mr X

During a telephone conversation with Ombudsman staff on 16 December 2015 Mr X advised that he was initially placed in a compound at Wickham Point APOD for single adult males but was now in a compound for families and couples with his son and grandson.

He said he had suffered a stroke in 2011 and takes medication every day. However, his main concern was that his seven-month old grandson was in immigration detention.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He has no matters before DIBP, the courts or tribunals and is on a removal pathway.