

**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 36 months (three years).

Name	Mr X
Citizenship	Country A
Year of birth	1972
Ombudsman ID	1002225-O
Date of DIBP's reports	12 November 2015 and 12 May 2016 ¹
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

6 March 2001	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. On the same day he escaped.
14 May 2013	Re-detained under s 189(1) following release from criminal custody. He was transferred to Facility B.
5 November 2014	Transferred to Facility C.
16 December 2014	Transferred to Facility D.
7 March 2015	Transferred to a correctional facility in State Q.
28 July 2015	Transferred to Facility E.
1 October 2015	Transferred to Facility F.
16 February 2016	Transferred to Facility D.

Visa applications/case progression

<p>The Department of Immigration and Border Protection (DIBP) advised that Mr X has a complex immigration history since arriving in Australia on 24 February 1996 on a Tourist visa.</p> <p>He has spent substantive periods as an unlawful non-citizen, been granted Bridging visas on departure grounds, received a Criminal Justice visa (CJV) while serving a prison sentence and was refused a Combined Partner visa.</p>	
20 May 2013	Lodged first Protection visa application which was refused on 30 July 2013.
1 August 2013	Appealed to the Refugee Review Tribunal (RRT).
16 September 2013	RRT affirmed the original decision on the first Protection visa application but referred Mr X's case for consideration under s 417.

¹ DIBP advised that it did not meet its statutory obligations in relation to providing Mr X's 24-month review under s 486N. DIBP explained that it had miscalculated the days in detention reported in his 24-month review due to system-related administrative errors which had not taken into account when he was in immigration detention in a correctional facility from 7 March 2015 to 27 July 2015. Mr X's 24-month review was due on 14 May 2015.

19 December 2013	The s 417 request was finalised without consideration by the former Minister.
6 January 2014	Requested an extension of time from the Federal Circuit Court (FCC) to apply for judicial review of the RRT's decision.
7 January 2014	Requested ministerial intervention under s 48B.
8 January 2014	Lodged second Protection visa application. DIBP determined that the application was invalid as Mr X was prevented by s 48A from making a further application.
13 January 2014	Requested judicial review by the FCC of DIBP's decision about his second Protection visa application.
20 January 2014	Found not to meet the guidelines for referral to the former Minister under s 48B.
6 February 2014	The FCC refused the application for an extension of time for judicial review of the RRT's decision.
20 February 2014	Applied to the Federal Court (FC) for leave to appeal the FCC's decision of 6 February 2014.
24 February 2014	The FCC dismissed the application for judicial review.
12 March 2014	DIBP notified Mr X of the unintentional release of personal information. ²
27 March 2014	The FC dismissed the application for leave to appeal.
28 March 2014	Mr X filed an application in the High Court (HC) challenging DIBP's decision to refuse the Combined Spouse visa application.
28 April 2014 – 16 September 2014	Applied for three Bridging visas on the basis that he had an ongoing matter in the HC. All three applications were refused.
1 May 2014 – 22 September 2014	Appealed to the MRT about the original decisions to refuse the Bridging visa applications.
9 May 2014 – 29 September 2014	The MRT determined it had no jurisdiction to consider the first review application and affirmed the decisions to refuse the two remaining Bridging visa applications.
14 July 2014	DIBP invited Mr X to comment on the unintentional release of personal information. He provided a response on 21 July 2014.
21 November 2014	Lodged third Protection visa application.
24 November 2014	DIBP determined the third Protection visa application was invalid as Mr X was prevented by s 48A from making a further application.
24 November 2014	DIBP initiated a ministerial intervention request under s 48B.
24 November 2014	Lodged a Bridging visa application which was refused.
14 January 2015	DIBP notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to determine whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.

² 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.

18 January 2015 and 26 May 2015	Mr X provided responses to DIBP.
18 February 2015	The HC dismissed Mr X's application challenging the decision to refuse the Combined Partner visa application.
12 November 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ³ which found that the ITOA process was procedurally unfair.
15 February 2016	DIBP notified Mr X that his case did not meet the guidelines for referral to the Minister under s 48B.
21 March 2016	The Minister filed a notice in the HC to appeal the FFC's decision.
27 July 2016	The HC found that the ITOA process was not procedurally unfair.

Criminal history

DIBP advised that between April 2005 and 30 May 2010 Mr X was in criminal custody on three occasions for allegations/charges related to attempted sexual assault, indecent assault and assault. Each time he was released from criminal custody either without conviction or charge.	
4 April 2013 – 14 May 2013	Convicted of an offence related to breaching an Apprehended Violence Order and assault occasioning actual bodily harm in relation to his wife. He served a prison sentence and was released on 14 May 2013.
5 March 2015	Charged with assault while in immigration detention.
6 May 2015	Transferred into criminal custody while detained under s 189(1).
28 July 2015	The assault charges were dismissed and Mr X was returned to immigration detention facility.

Health and welfare

International Health and Medical Services (IHMS) reported that Mr X was monitored and treated for a range of physical health issues including possible tuberculosis, gastritis and chest pain. IHMS advised that he has required intermittent hospital admissions for ongoing abdominal pain and gastritis and specialist review for his chest pain and another condition. He continues to be monitored for these conditions.	
Mr X also received treatment and support from the mental health team for ongoing anxiety and depression with associated insomnia. IHMS advised that he was semi-compliant with prescribed medication and did not attend scheduled reviews but continued to be offered mental health services.	
18 November 2014	A DIBP incident report recorded that Mr X punched a wall in frustration.

Detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in several incidents of assaults against detainees, abusive and aggressive behaviour and an incident of serious property damage.	
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³ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Other matters

7 November 2015	<p>Mr X lodged a complaint with the Ombudsman's office about his transfer to Facility F and being separated from his wife and children who live in City G.</p> <p>The Ombudsman's office provided advice to Mr X about DIBP's placement decisions and the investigation was closed on 19 February 2016.</p>
12 November 2015	<p>DIBP advised that Mr X is married to an Australian citizen and has two children who are Australian citizens.</p>

Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of an ITOA.

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 24-month review on Mr X, the Ombudsman notes that DIBP advised that it did not meet its statutory reporting timeframe due to a system-related administrative 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.