

**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 period of more than 36 months (three years) due to an adverse security assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1002824
Date of DIBP's reports	2 July 2015, 18 December 2015 and 17 June 2016
Total days in detention	1094 (at date of DIBP's latest report)

Detention history

19 June 2013	Mr X was detained under s 189(1) of the <i>Migration Act 1958</i> after his visa was cancelled. He was transferred to Facility B.
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Visa applications/case progression

15 November 2008	Arrived in Australia as the holder of a Partner (Provisional) visa.
17 June 2013	The Australian Security Intelligence Organisation issued Mr X with an adverse security assessment.
19 June 2013	The Department of Immigration and Border Protection (DIBP) issued Mr X with a Notice of Intention to Consider Cancellation of his Partner (Provisional) visa. The same day DIBP cancelled Mr X's visa under s 116 and he was detained under s 189(1).
25 June 2013	Mr X's application for a Partner (Migration) visa was refused on the grounds he was no longer the holder of a Partner (Provisional) visa. On 1 July 2013 he requested judicial review by the Migration Review Tribunal (MRT) and on 26 August 2013 the MRT affirmed the original decision.
1 July 2013	Lodged an application for a Bridging visa. On 25 July 2013 Mr X was notified of the intention to consider refusal of his Bridging visa application under s 501 and on 25 September 2013 his Bridging visa application was refused under s 501.
10 October 2013	Mr X commenced proceedings in the High Court (HC) requesting judicial review of the adverse security assessment and the refusal of his various visa applications.
14 November 2013	The HC remitted to the Federal Court (FC) those parts of the application related to the adverse security assessment and the Bridging visa refusal. All other aspects of the application were stood over pending the FC outcome.
7 February 2014	FC determined that a Full Federal Court (FFC) would hear the case.

18 August 2014	The FFC dismissed the challenge to the adverse security assessment.
15 September 2014	Mr X filed an application for special leave to appeal the FFC decision to the HC and requested that it be heard together with the balance of his HC application.
13 February 2015	The HC refused the application for special leave. The balance of the HC application remained. Mr X sought leave to amend his application to plead a denial of procedural fairness.
4 March 2015	The HC found that the amended grounds were not arguable and dismissed the application.
1 May 2015	Lodged an application for a Protection visa.
9 December 2015	Lodged an application for a Bridging visa but was advised on 10 December 2015 that the application was invalid under s 501.
15 June 2016	Protection visa application refused. At the time of DIBP's latest report it was open to Mr X to request judicial review of this decision by the Administrative Appeals Tribunal.

Health and welfare

International Health and Medical Services (IHMS) advised that since being detained Mr X has been diagnosed with adjustment disorder, major depression and insomnia. He is prescribed with antidepressant medication and receives regular counselling and psychotherapy.

On four occasions between November 2014 and February 2016 Mr X's treating psychiatrists have strongly recommended that he be transferred to the community. His psychiatrists have recorded that ongoing restricted detention is causing Mr X significant psychological stress, which is compounded by being separated from his wife and uncertainty about his future, and advised that his mental health would improve significantly in the community.

IHMS further advised that Mr X suffers from chronic back pain and has been diagnosed with a disc prolapse and mild scoliosis. He was prescribed with pain relief medication, referred for physiotherapy and his condition continues to be monitored by an orthopaedic specialist. Mr X has advised that his back pain contributes to his problems with insomnia.

Mr X also underwent an appendectomy on 4 March 2015 after being transferred to a hospital emergency department with acute appendicitis.

Other matters

6 August 2015	Mr X lodged a complaint with the Ombudsman's office alleging that the activity points system ¹ is being unfairly applied at Facility B. The Ombudsman's office investigated the complaint and provided Mr X with a better explanation of the system's rules.
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¹ Section 6, Clause 5.6 of the *Immigration Detention Facilities and Detainee Services Contract* stipulates that Serco must implement and manage DIBP's approved Individual Allowance Programme (IAP) in each detention facility. Through the IAP, detainees are allocated points that can be exchanged for a variety of goods on offer, such as telephone cards, tobacco and snack food, at the facility shop managed by Serco.

21 July 2016	Mr X lodged a further complaint with the Ombudsman's office about his treatment at Facility B. This matter is currently under investigation by the Ombudsman's office and remained outstanding at the time of this report.
Mr X's wife and his brother are both Australia citizens and reside lawfully in the community.	

Information provided by Mr X

During an interview with Ombudsman staff at Facility B on 11 December 2015 Mr X advised that he believes that his visa was cancelled because of false allegations that he had engaged in people smuggling activities. He noted that he has never been charged with or convicted of any crime.

Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention. He is the subject of an adverse security assessment and has been held in restricted immigration detention for more than three years. At the time of DIBP's latest review it was open to Mr X to appeal the refusal of his Protection visa application.

The Ombudsman remains seriously concerned about the risk that an indeterminate period of detention poses to detainee's mental and physical health. The Ombudsman notes the advice from IHMS that prolonged detention is having a detrimental effect on Mr X's mental health and notes the recommendations by Mr X's psychiatrists that he be transferred to the community in order to improve his mental health. The Ombudsman makes no recommendations in this report.