

**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).

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| <b>Name</b>                    | Mr X                                   |
| <b>Citizenship</b>             | Stateless (claimed), born in Country A |
| <b>Year of birth</b>           | 1985                                   |
| <b>Ombudsman ID</b>            | 1002395-O                              |
| <b>Date of DIBP's reports</b>  | 8 May 2016 and 6 November 2016         |
| <b>Total days in detention</b> | 912 (at date of DIBP's latest report)  |

**Detention history**

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| 12 April 2012                     | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel 314 <i>Opal</i> . He was transferred to an Alternative Place of Detention (APOD), Christmas Island. |
| 14 April 2012                     | Transferred to Christmas Island Immigration Detention Centre (IDC).  |
| 2 May 2012                        | Transferred to Wickham Point APOD.   |
| 6 August 2012                     | Transferred to Scherger IDC.   |
| 13 September 2012                 | Granted a Bridging visa and released from restricted detention.  |
| 10 October 2014                   | Re-detained under s 189(1) following cancellation of Bridging visa. Transferred to Maribyrnong IDC.  |
| 16 December 2014 –<br>9 June 2016 | Transferred on multiple occasions between Maribyrnong IDC, Yongah Hill IDC and Christmas Island IDC.   |
| 3 November 2016                   | Transferred to Maribyrnong IDC.  |

**Visa applications/case progression**

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| 29 May 2012       | The Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.                         |
| 22 August 2012    | Lodged a Protection visa application.   |
| 4 September 2012  | Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa. |
| 13 September 2012 | Granted a Bridging visa and released from detention.  |
| 13 May 2013       | Mr X was found to be owed protection under the Refugee Convention.  |

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| 6 February 2014                       | Protection visa refused under clause 866.222 of the <i>Migration Regulations 1994</i> . <sup>1</sup>   |
| 20 February 2014                      | Appealed to the Refugee Review Tribunal (RRT) in relation to Protection visa refusal.  |
| 31 July 2014                          | RRT found that Mr X was owed protection under the Refugee Convention and that he was no longer precluded from being granted a Protection visa as clause 866.222 had been disallowed. The RRT remitted the application to the Department of Immigration and Border Protection (the department). |
| 10 October 2014                       | Bridging visa cancelled under s 116 following national security allegations.   |
| 14 October 2014                       | Appealed to the Migration Review Tribunal (MRT) in relation to Bridging visa cancellation.   |
| 31 October 2014                       | MRT affirmed the cancellation decision.  |
| 4 December 2014                       | Requested judicial review by the Federal Circuit Court (FCC) of the cancellation decision.   |
| 20 February 2015                      | FCC remitted the decision to the MRT for reconsideration.  |
| 27 February 2015 –<br>6 November 2015 | MRT reconsidered the Bridging visa cancellation on two occasions following FCC remittal and affirmed the original decision.  |
| 24 September 2015                     | Signed a request for removal form. Mr X withdrew the removal request on 25 November 2015. The department advised that it was assisting him with obtaining travel documents from Country A.   |
| 16 February 2016                      | Applied to the High Court (HC) seeking orders that a decision be made on the Protection visa application.  |
| 31 March 2016                         | HC referred the application to the FCC and it was subsequently amended to include the issue of whether Mr X was being provided with all reasonable facilities to enable him to obtain legal advice or initiate legal proceedings.  |
| 13 April 2016                         | FCC review was adjourned. A judgment was handed down on 8 August 2016 dismissing the amended application. The matter was discontinued on 30 November 2016.   |
| 20 May 2016                           | Mr X requested judicial review by the FCC of the Bridging visa cancellation for a third time and the matter was remitted to the Administrative Appeals Tribunal (AAT) <sup>2</sup> for a decision according to law.  |
| 17 June 2016                          | The department advised that following legislative amendment, Mr X's original Protection visa application is now taken to be a valid application for a Temporary Protection visa (TPV).   |

<sup>1</sup> This clause prevented people who arrived in Australia without a valid visa from being granted a Permanent Protection visa. The amendment was introduced on 14 December 2013 but was disallowed on 27 March 2014.

<sup>2</sup> On 1 July 2015 the MRT and RRT were merged into the AAT.

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| 13 October 2016  | The Minister refused Mr X's TPV application under s 501 after finding that he did not pass the character test.   |
| 18 October 2016  | Mr X signed a request for removal which he withdrew on 27 October 2016.  |
| 6 November 2016  | The department advised that Mr X is no longer a person of interest to an external agency in relation to national security concerns.  |
| 24 February 2017 | Mr X's legal representative advised that the AAT had overturned the original decision to cancel his Bridging visa but the visa had naturally expired so the AAT's decision had no effect on his continued detention. |

### Health and welfare

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| <p>International Health and Medical Services (IHMS) advised that Mr X has attended both individual and group therapy sessions for the management of situational stress and depression associated with his ongoing detention. He was prescribed with antidepressant medication and has regular contact with the Mental Health Team.</p> <p>IHMS further advised that Mr X has received treatment and monitoring for physical health concerns including a hernia, hepatitis B, and a head injury following an assault.</p> |   |
| 10 October 2014  | An Incident Report recorded that Mr X asked a departmental officer to kill him.         |
| 26 December 2014 – 30 July 2016  | Incident Reports recorded that Mr X was the victim of a number of minor assaults.       |
| 3 November 2015  | An Incident Report recorded that Mr X was transferred to hospital following an assault. |
| 6 – 10 December 2015   | An Incident Report recorded that Mr X refused food and fluid.                           |

### Detention incidents

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| <p>Incident reports record that since Mr X was re-detained, he has been involved in multiple behavioural incidents of a minor nature.</p> |   |
| 7 October 2014  | An Incident Report recorded that Mr X expressed frustration to his case manager in relation to ongoing delays in finalising his Protection visa application and allegedly made statements that constituted threats to national security. The Australian Federal Police investigated the matter and provided him with a warning. |
| 4 November 2015   | An Incident Report recorded that Mr X was allegedly found in possession of a knife.   |

### Other matters

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| 26 August 2015 | The Australian Human Rights Commission notified the department that it was investigating a complaint from Mr X. On 21 October 2015 and 16 June 2016 the department provided further information. The matter remained ongoing at the time of the department's latest review. |
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| 31 August 2015 | Mr X lodged a complaint with the Ombudsman's office in relation to his transfer from Maribyrnong IDC and other matters. The Ombudsman's office investigated the matter and the complaint was finalised on 10 November 2015. |
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**Information provided on behalf of Mr X by his legal representative**

An independent psychiatric report prepared in November 2016 that was provided by Mr X's legal representative advised that his mental wellbeing had deteriorated since his return to detention. The psychiatrist advised that he claims he has a constant sense of fear in detention after being physically assaulted on a number of occasions, once resulting in hospitalisation. He described depressive feelings of helplessness, hopelessness, emptiness and anxiety and presented with low mood, frustration and sleep disturbance. The psychiatrist advised that Mr X suffers from depression associated with the uncertainty of his detention circumstances.

The psychiatrist further advised that Mr X was likely to have been depressed at the time of the incident on 7 October 2014 as he was relatively isolated in the community and was worried about his future and financial situation at the time. The psychiatrist noted that, based on available information, it was not the fear of the case worker but organisational procedures that resulted in Mr X's comments being reported. The psychiatrist advised that Mr X remains at risk of depression for as long as his visa application process remains unresolved. She reported that he expressed great remorse over what he had said and did not blame the case worker or the service provider. She also advised that she assessed Mr X to be at low risk of repeating statements of concern to national security or acting on any statements of this kind and recommended that he be released into the community.

**Ombudsman assessment/recommendation**

Mr X has been found to be owed protection under the Refugee Convention and has been held in restricted detention for more than two and a half years. At the time of the department's latest review Mr X was awaiting the outcome of judicial review.

The Ombudsman notes the incident in October 2014 and further notes the department's advice in November 2016 that Mr X was no longer the subject of interest to an external agency.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose. The Ombudsman further notes advice from the independent psychiatric report that Mr X would benefit from a community detention placement and notes that he has reported ongoing fear following a number of assaults.

Given Mr X was found to be owed protection and to be stateless, the prospect of removal from Australia, voluntary or otherwise, would appear to be remote. Consequently unless he is granted a visa or a community detention placement it appears likely that he will remain in restricted detention for an indefinite period.

The Ombudsman recommends that Mr X be referred for consideration for a community detention placement.