

**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 36 months (three years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A, born in Country B
<b>Year of birth</b>	1974
<b>Ombudsman ID</b>	1002562
<b>Date of DIBP's reports</b>	25 May 2015, 19 November 2015 and 20 May 2016
<b>Total days in detention</b>	1096 (at date of DIBP's latest report)

**Detention history**

23 November 2004	Detained under s 189(1) of the <i>Migration Act 1958</i> after he was located living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
12 January 2005	Granted a Bridging visa and released from immigration detention.
17 June 2010	Located living unlawfully in the community, re-detained under s 189 and transferred to Villawood IDC.
10 December 2010	Transferred to a correctional facility.
17 February 2011	Released from criminal custody and re-detained under s 189 and transferred to Villawood IDC.
28 February 2011	Granted a Bridging visa and released from immigration detention.
21 July 2013	Released from criminal custody and re-detained under s 189 and transferred to Villawood IDC.

**Visa applications/case progression**

<p>Mr X arrived in Australia on 7 October 1997 on a Business (short stay) visa valid until 7 December 1997. Mr X has a long and complex visa application history, which includes being granted several Bridging visas while he pursued an application for a Protection visa which he lodged on 20 November 1997. The High Court dismissed Mr X's application to appeal on 6 March 2008.</p> <p>Mr X's last Bridging visa granted on departure grounds ceased on 24 February 2010 and he remained in the community unlawfully.</p>	
27 April 2010	Following a reassessment Mr X was found not to meet the guidelines for referral to the former Minister under s 417 and was found to be an unlawful non-citizen. He was subsequently located in the community and re-detained on 17 June 2010.
22 February 2011	Lodged an application for a Combined Partner visa and an associated Bridging visa. He was granted a Bridging visa on 28 February 2011.
18 March 2011	A subsequent Bridging visa was granted valid until 31 March 2011.

23 April 2013	Combined Partner visa application was refused.
2 July 2013	Appealed the decision to refuse a Combined Partner visa to Migration Review Tribunal (MRT).
23 July 2013	Following his re-detention he also appealed a Bridging refusal decision to the MRT.
1 August 2013	MRT affirmed the refusal decisions.
17 September 2013	Lodged a Bridging visa application which was refused on the same day.
18 September 2013	Requested judicial review of the MRT's decision concerning the Combined Partner visa application refusal to the FCC. He also lodged a Bridging visa application.
25 September 2013	Bridging visa application was referred to the Visa Applicant Character Consideration Unit (VACCU) for refusal consideration under s 501.
16 December 2013	Mr X withdrew his Bridging visa application.
21 February 2014	FCC remitted Mr X's case to the MRT.
28 February 2014	MRT commenced a review of the decision.
6 June 2014	MRT set aside the decision.
15 January 2015	Mr X's Combined Partner visa application was referred to the VACCU. Mr X was considered for ministerial intervention under s 197AB for a possible community detention placement but did not meet the guidelines for referral to the Minister.
20 January 2015	His application was assessed under s 501 and it was determined there may be character concerns.
3 March 2015	DIBP notified Mr X of its intention to consider refusal of his Partner visa application under s 501. DIBP invited Mr X to comment and provide information in relation to this matter. He provided responses in April and May 2015.
17 August 2015	DIBP found that Mr X's case did not meet the s 195A guidelines for referral to the Minister.
16 February 2016	Partner (Temporary) visa refused on character grounds under s 501 and Partner (Residence) visa application was also refused.
3 March 2016	Appealed to the Administrative Appeals Tribunal (AAT) about DIBP's decision to refuse a Partner (Temporary) visa.
17 May 2016	AAT set aside DIBP's decision and substituted with a decision that the Partner (Temporary) visa application is not refused on character grounds under s 501.
20 May 2016	Lodged an application for a Bridging visa.
24 May 2016	Bridging visa application refused.
25 May 2016	Appealed the Bridging visa refusal to the AAT.

### **Criminal history**

3 September 2006	Mr X was convicted of destroying or damaging property and required to serve a six-month good behaviour bond.
10 December 2010	Convicted of assault occasioning actual bodily harm, contravening an Apprehended Violence Order and stalking/intimidating with intent to harm. He was sentenced to one year, nine months and 18 days imprisonment.
15 April 2013	Convicted of recklessly wounding another person and sentenced to two years and four months imprisonment.

### **Health and welfare**

International Health and Medical Services (IHMS) advised that while in restricted immigration detention Mr X has been treated for a range of physical health issues including back pain and symptoms associated with a head and spinal injury he sustained in 2009. IHMS reported that Mr X continued to be monitored and treated for ongoing hypertension and insomnia.

Mr X has also received treatment and intensive specialist counselling for ongoing mental health issues including an adjustment disorder with anxiety and depression and a history of torture and trauma.

IHMS advised that psychologists and psychiatrists have repeatedly attributed Mr X's mental health issues as related to the impact that detention has on his family and his prolonged detention. Specialists have recommended that Mr X would benefit from being released into the community to live with his family and receive support and assistance from the community while his case is resolved.

In October 2015 the psychologist recommended Mr X continue with counselling while he remained in restricted detention but noted that the benefits were likely to be limited while he remained indefinitely detained.

### **Other matters**

25 May 2015	DIBP advised that Mr X is married to an Australian citizen and has three minor Australian-citizen children.
18 August 2015	<p>Mr X's solicitor provided a submission to the Ombudsman's office outlining concerns about Mr X's prolonged immigration detention. In particular the solicitor highlighted concern for Mr X's mental health and the impact of his detention on his family's health and welfare.</p> <p>The solicitor stated that Mr X's children are in a vulnerable state without their father and face unique and difficult challenges due to their cultural background and require their father's support and stability. The solicitor stated that the interests of Mr X's family and stabilising his mental wellbeing significantly outweigh any concerns there may be that Mr X may reoffend.</p>
10 December 2015	Mr X's wife, Ms Y, telephoned the Ombudsman's office to advise that she and her children are in a very difficult situation because of Mr X's prolonged detention and that she is finding it difficult to cope even with support from people in the community.

### **Information provided by Mr X**

During telephone conversations with Ombudsman staff on 26 November 2015, 14 January 2016 and 7 June 2016 Mr X expressed remorse for his past actions and concern for his family's situation.

Mr X said he is very worried for his wife's health and also his sons' education and welfare. He said that because of distance and cost they are not able to visit him regularly.

Mr X stated that he has multiple physical and mental health concerns, with many of his symptoms related to a head and spinal injury he sustained in 2009. He said he receives good support from IHMS and an external psychologist whom he sees on a weekly basis.

### **Ombudsman assessment/recommendation**

On 16 February 2016 DIBP refused to grant Mr X a Partner (Temporary) visa under s 501. Mr X appealed to the AAT and on the 17 May 2016 the AAT remitted the decision to DIBP.

On 24 May 2016 DIBP refused to grant Mr X a Bridging visa and Mr X is now awaiting the outcome of his appeal to the AAT.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose. In the case of Mr X, the Ombudsman notes that that he has been in detention for more than three years and during this time has experienced ongoing mental health problems.

The Ombudsman notes that IHMS advised that Mr X's treating professionals attribute Mr X's ongoing mental health issues to separation from his wife and children and his unresolved immigration case.

The Ombudsman notes that Mr X has lived in Australia since 1997 and that Mr X's wife and children are all Australian citizens. The Ombudsman notes with concern the ongoing effect of detention not only on Mr X's mental health, but also on his family.

To mitigate the ongoing health and welfare issues for Mr X and his family the Ombudsman recommends that DIBP give priority to resolving Mr X's case.