

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1976
<b>Ombudsman ID</b>	1002818-O
<b>Date of department's reports</b>	23 June 2017 and 22 December 2017
<b>Total days in detention</b>	910 (at date of department's latest report)

### Detention history

25 February 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
19 May 2015	Granted a bridging visa and released from immigration detention.
15 September 2015	Re-detained under s 189(1) following the cancellation of his visa. He was transferred to Villawood IDC.
January 2016	Removed from Australia to Country A.
24 January 2016	Re-detained under s 189(1) after being refused entry to Country A. He was transferred to Facility B.
8 September 2016	Transferred to Facility C.

### Visa applications/case progression

Mr X arrived in Australia on 29 May 2013 on a student visa.	
17 July 2013 and 16 January 2015	Lodged student visa applications which were subsequently found to be invalid.
30 September 2013	Lodged a Protection visa application and granted an associated bridging visa.
26 February 2014	Protection visa application refused.
3 September 2014	The Refugee Review Tribunal (RRT) affirmed the refusal of his Protection visa application.
10 October 2014	Bridging visa ceased and Mr X remained unlawfully in the community.
29 January 2015	The Federal Circuit Court (FCC) dismissed Mr X's application for judicial review of the RRT's decision following his non-appearance in court.
11 March 2015	Lodged a bridging visa application which was refused on 13 March 2015.
23 March 2015	The Migration Review Tribunal (MRT) affirmed the refusal of his bridging visa application.

27 March 2015	The Federal Court (FC) dismissed Mr X's application for the reinstatement of his application for judicial review at the FCC.
4 May 2015	Lodged a bridging visa application which was refused on 6 May 2015.
18 May 2015	The MRT remitted the refusal of his bridging visa application to the Department of Home Affairs (the department) with direction. On 7 September 2015 Mr X was granted a bridging visa.
13 August 2015	The Full Federal Court (FFC) dismissed Mr X's application for leave to appeal the FCC's decision of 29 January 2015.
15 September 2015	Bridging visa cancelled under s 116 following criminal charges.
1 October 2015	The MRT affirmed the cancellation of his bridging visa under s 116.
15 October 2015	The FFC dismissed Mr X's application for the reinstatement of leave to appeal the FCC's decision of 29 January 2015.
22 January 2016	Found not to meet the guidelines for referral to the Minister to lift the bar under s 48A to allow him to lodge a second Protection visa application.
28 January 2016	Lodged a second Protection visa application.
12 February 2016	Protection visa application deemed invalid as Mr X is subject to the bar under s 48A.
3 May 2016	The FCC dismissed Mr X's application for judicial review of the delegate's decision to consider his Protection visa application to be invalid under s 48A.
29 June 2016 and 12 December 2016	Lodged bridging visa applications, both of which were deemed invalid.
1 September 2016	The FC dismissed Mr X's application for an extension of time to appeal the FCC's decision of 3 May 2016.
19 April 2017	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.
8 November 2017	Applied to the FCC for judicial review of the decision to consider his bridging visa application, lodged on 29 June 2016, to be invalid. A hearing was scheduled for 9 February 2018.
14 November 2017	Lodged a bridging visa application.
15 November 2017	Bridging visa application deemed invalid as Mr X was refused immigration clearance upon his return to Australia on 24 January 2016 following his failed removal to Country A.
27 November 2017	The authorities of Country A advised the department that they were awaiting confirmation from the government of Country A before they issue Mr X with a travel document.
22 December 2017	The department advised that Mr X has no matters before the department and his matter before the FCC is not considered a barrier to his removal from Australia. The department was awaiting the issue of a travel document by the authorities of Country A to facilitate Mr X's removal.

### **Criminal history**

20 July 2015	Convicted of driving without a license but received no penalty.
31 August 2015	Charged with two acts of indecency and pleaded not guilty to both charges. The charges were withdrawn on 15 January 2015 and the case was finalised.

### **Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X was reviewed by an IHMS psychiatrist in October 2015 and diagnosed with reactive depression. He was prescribed with antidepressant medication and in May 2016 his medication was increased after he presented with symptoms of anxiety. He attended a routine mental health assessment in August 2017 and it was reported that his mood and mental state was settled. His condition continued to be monitored by the mental health team.

IHMS advised that Mr X received treatment for hearing loss and dental issues. He was reviewed by an ear nose and throat specialist in June 2017 and continued to be monitored by a general practitioner.

### **Case status**

Mr X was detained on 25 February 2015 after living unlawfully in the community and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

On 26 February 2014 Mr X's Protection visa application was refused and on 3 September 2014 the RRT affirmed the refusal.

On 29 January 2015 the FCC dismissed Mr X's application for judicial review of the RRT's decision following his non-appearance in court. Mr X's subsequent applications to the FC and FCC to appeal this decision have been dismissed.

On 29 June 2016 Mr X lodged a bridging visa application which was deemed invalid. On 8 November 2017 Mr X applied to the FCC for judicial review of this decision.

On 22 December 2017 the department advised that Mr X has no matters before the department and his case before the FCC is not considered a barrier to his removal from Australia. The department was awaiting the issue of a travel document by the authorities of Country A to facilitate Mr X's removal.