

## 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 remained in restricted immigration detention for more than 24 months (two years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1989
<b>Ombudsman ID</b>	1002204-O
<b>Date of DIBP's report</b>	29 October 2015
<b>Total days in detention</b>	730 (at date of DIBP's report)

### Detention history

29 October 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> following criminal charges. He was transferred to Villawood Immigration Detention Centre (IDC).
6 April 2014	Transferred to Yongah Hill IDC.
January 2016	Mr X was released from detention when he voluntarily departed Australia and returned to Country A.

### Visa applications/case progression

23 November 2008	Lodged a Vocational Education and Training Sector (VETS) visa application.
9 March 2009	VETS visa application was granted.
26 March 2009	Arrived in Australia as the holder of a VETS visa.
28 January 2011	Mr X departed Australia.
17 March 2011	Mr X returned to Australia.
28 July 2011	Lodged a Higher Education Sector (HES) visa application. The same day Mr X was granted an associated Bridging visa.
1 August 2011	VETS visa expired and the associated Bridging visa came into effect.
30 September 2011	HES visa application was granted and the associated Bridging visa ceased.
30 August 2013	HES visa expired and Mr X became an unlawful non-citizen.
30 September 2013 and 8 October 2013	Granted Bridging visas.
15 October 2013	Bridging visa expired and Mr X became an unlawful non-citizen.
7 November 2013	Lodged a Protection visa application which triggered an associated Bridging visa application.
14 November 2013	Associated Bridging visa application refused.

15 November 2013	Appealed to the Migration Review Tribunal (MRT).
26 November 2013	MRT affirmed original decision.
11 December 2013	Protection visa application refused.
14 December 2013	Appealed to the Refugee Review Tribunal (RRT).
13 February 2014	RRT affirmed original decision.
12 March 2014	DIBP notified Mr X of the unintentional release of personal information. <sup>1</sup>
14 July 2014	DIBP issued Mr X with a letter inviting him to comment on the privacy breach. He provided a response on 24 July 2014.
14 January 2015	DIBP issued Mr X with a letter notifying him of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
13 February 2015	DIBP invited Mr X to comment on country and other information relevant to the ITOA.
19 February 2015	He provided a response in relation to the ITOA.
15 April 2015	DIBP finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
29 April 2015	Requested judicial review of the negative ITOA by the Federal Circuit Court (FCC). DIBP advised that the matter was adjourned pending the outcome of the Minister's application for special leave to appeal.
23 October 2015	Mr X requested voluntary removal.
29 October 2015	DIBP advised that Mr X's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>2</sup> which found that the ITOA process was procedurally unfair. DIBP further advised that it has filed an application in the High Court (HC) for special leave to appeal the FFC's decision but is making the necessary administrative arrangements to recommence consideration of privacy breach-related claims prior to the matter being heard by the HC.
January 2016	Mr X voluntarily departed Australia.

### **Criminal history**

29 October 2013	Mr X was arrested by New South Wales Police for fleeing the scene of a motor vehicle accident. He was charged with negligent and unlicensed driving and not giving particulars.
6 February 2014	Mr X was convicted and received a fine.

<sup>1</sup> 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.

<sup>2</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

### Health and welfare

International Health and Medical Services provided details of Mr X's health and welfare. No significant physical health concerns were noted.

1 November 2013

Mr X disclosed that he was withdrawing from an opiate addiction. He was closely monitored and no exacerbation was noted. He declined to attend mental health assessments but was aware of the self-referral process.

### Case status

Mr X was released from detention in January 2016 when he voluntarily departed Australia and returned to Country A.