

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fourth s 486O report on Mr X who has remained in immigration detention for more than 72 months (six years).

The first report 1392/13 was tabled in Parliament on 26 June 2013, the second report 1001254 was tabled in Parliament on 18 June 2014 and the third report 1001502 was tabled in Parliament on 3 June 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1987
<b>Ombudsman ID</b>	1002413
<b>Date of DIBP's reports</b>	17 April 2015, 14 October 2015 and 11 April 2016
<b>Total days in detention</b>	2,187 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001502), Mr X remained at Facility B.	
17 March 2016	Transferred to Facility C.

### Recent visa applications/case progression

29 October 2014	Mr X provided the Department of Immigration and Border Protection (DIBP) with information in relation to the International Treaties Obligations Assessment (ITOA) determining whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
14 April 2015	DIBP reviewed the decision to revoke Mr X's community detention placement and found that he did not meet the guidelines for referral to the Minister for reconsideration under s 197AB of the <i>Migration Act 1958</i> .
18 May 2015	DIBP invited Mr X to comment on information in relation to the ITOA.
8 June 2015	Mr X provided a response.
6 July 2015	DIBP finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
13 July 2015	Mr X signed a request for removal but later retracted his request.
14 October 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>1</sup> which found that the ITOA process was procedurally unfair.

<sup>1</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

1 April 2016	Mr X's case was referred on a ministerial submission for consideration under s 197AB of a community detention placement.
14 April 2016	DIBP advised that on 21 March 2016 the Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision that the ITOA process was procedurally unfair.

### Health and welfare

October 2014	International Health and Medical Services advised that Mr X attended a specialist review following laser eye surgery.
13 November 2014	Attended a physiotherapy appointment for chronic lower back pain and prescribed with pain relief medication.
December 2014	Presented with recurrent eye pain and referred to an eye clinic for treatment.
26 March 2015	Attended an appointment with an ophthalmologist. No further appointments were recommended.
12 May 2015	Fractured his ankle while playing sport. He was admitted to hospital for surgery on 15 May 2015 and discharged the same day. He was advised to wear a support boot and prescribed with pain relief medication.
29 May 2015 – 11 August 2015	Attended post-operative reviews with no reported complications.
15 August 2015	Presented to the general practitioner (GP) with pain related to a previous abscess. He was referred for surgical review.
29 September 2015	Received surgery for sinus problems.
26 October 2015	Presented to the GP with continuing ankle pain.
8 January 2016	Following continued ankle pain he was referred for an x-ray and a magnetic resonance imaging (MRI) scan which identified no abnormalities.
1 February 2016	Self-referred to a specialist counselling service.
4 February 2016	Diagnosed with chronic back pain and referred for an MRI.

### Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

Mr X's case is affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. On 21 March 2016 the Minister filed an application in the HC for special leave to appeal the FFC's decision.

The Ombudsman notes that on 1 April 2016 Mr X's case was referred to the Minister for consideration of a community detention placement and makes no recommendations in this report.