

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O report on Mr X who has remained in restricted immigration detention for a period of more than 42 months (three and a half years).

The first report 1001503 was tabled in Parliament on 22 October 2014 and the second report 1001932 was tabled in Parliament on 27 May 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1981
Ombudsman ID	1002430
Date of DIBP's reports	21 April 2015 and 15 October 2015
Total days in detention	1,276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001932), Mr X has remained at Villawood Immigration Detention Centre.

Recent visa applications/case progression

The Ombudsman's previous report (1001932) incorrectly reported that Mr X was issued with a letter on 15 July 2015 inviting him to comment on the unintentional release of personal information. ¹ Mr X was issued with this letter on 15 July 2014.	
23 October 2014	Lodged an application for special leave to appeal to the High Court (HC) in relation to an Administrative Appeals Tribunal (AAT) decision of 19 November 2013. The AAT had affirmed the Department of Immigration and Border Protection's (DIBP) decision to refuse Mr X's application for a Bridging visa under s 501 of the <i>Migration Act 1958</i> .
11 November 2014	Lodged an application for an injunction to the Federal Circuit Court to prevent his removal from Australia. DIBP advised that the matter was dismissed.
25 February 2015	Withdrew his application to the HC in relation to the decision of 15 March 2013 that his application for a Combined Partner visa was invalid.
27 February 2015	DIBP commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
2 March 2015	Mr X was issued with a letter notifying him of the commencement of the ITOA. However, he did not provide a response.

¹ 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.

5 March 2015	HC dismissed his application for special leave to appeal the AAT decision.
30 March 2015	DIBP issued him with another letter in relation to the ITOA. Mr X provided a response on 13 April 2015.
1 June 2015	DIBP finalised the ITOA, with the finding that his case did not engage Australia's <i>non-refoulement</i> obligations.
8 September 2015	Mr X requested ministerial intervention under ss 417 and 48B.
15 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) ² which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how this judgment will affect protection obligation processes. DIBP also advised that Mr X's case was being assessed against the guidelines under s 195A for the possible grant of a Bridging visa.
February 2016	DIBP 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.

Health and welfare

16 January 2015	Mr X saw the general practitioner in relation to left wrist pain. No fracture was identified and he attended several physiotherapy sessions until April 2015.
10 April 2015	Attended a mental health assessment but International Health and Medical Services (IHMS) advised that no assessment was made because he refused to engage with the mental health team.
22 September 2015	IHMS advised that Mr X has not presented with any chronic or acute mental health issues during this reporting period.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. However, his case is affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. DIBP has advised that it is making administrative arrangements to recommence consideration of privacy breach-related claims.

Mr X is also awaiting a response to his requests for ministerial intervention. At the time of DIBP's latest review it was assessing his case for the possible grant of a Bridging visa under s 195A.

² SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.