

## 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 restricted immigration detention for more than 72 months (six years).

The first report 1127/12 was tabled in Parliament on 13 November 2013, the second report 1001285 was tabled in Parliament on 18 June 2014 and the third report 1001511 was tabled in Parliament on 13 May 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>	1970
<b>Ombudsman ID</b>	1002454
<b>Date of DIBP's reports</b>	5 May 2015, 30 October 2015 and 24 April 2016
<b>Total days in detention</b>	2184 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001511), Mr X remained at Facility J.	
9 April 2015	Transferred to Facility P. On the same day he was transferred to Facility C.
22 July 2015	Transferred to Facility J.
18 October 2015	Transferred to Facility P.
28 October 2015	Transferred to Facility J.

### Recent visa applications/case progression

11 July 2014	The Department of Immigration and Border Protection (DIBP) issued Mr X with a letter inviting him to comment on the unintentional release of personal information. <sup>1</sup>
27 October 2014	Mr X provided his response in relation to the privacy breach.
14 November 2014	The Federal Circuit Court dismissed Mr X's request for judicial review of the decision to refuse his Protection visa application.
15 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. Mr X was invited to provide further information for consideration.

<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.

9 February 2015	Mr X provided his response in relation to the ITOA.
1 June 2015	DIBP invited Mr X to comment on country and other information relevant to the ITOA.
7 July 2015	Mr X provided further information in relation to the ITOA.
27 August 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
30 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>2</sup> which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.
13 April 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.

### Criminal matters

6 February 2015	DIBP advised that Mr X was referred to the Australian Federal Police (AFP) after he was allegedly involved in an assault against a Serco officer. The matter was scheduled to be heard at the Y Court in January 2016.
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### Health and welfare

November 2014	International Health and Medical Services (IHMS) reported that a psychiatric review noted that Mr X was at high risk of violence to himself and others and had unpredictable and highly impulsive behaviour as a result of his severe borderline and antisocial personality disorder. The psychiatrist reported that a correctional centre would be a more appropriate placement for Mr X as he was a safety concern, not only to himself but to others.  IHMS advised that Mr X was closely monitored.
December 2014	Mr X refused food and fluid for several days. He was offered specialist counselling at his request.
February 2015	DIBP Incident Reports recorded that Mr X threatened self-harm on four occasions. On one occasion he self-harmed by swallowing a razor blade. IHMS advised that Mr X destroyed detention centre property and threatened to harm IHMS staff.
20 April 2015	Reviewed by a psychiatrist who reported that Mr X presented with a stable mood and had no thoughts of self-harm. The psychiatrist recommended Mr X continue with his medication regime and counselling with the mental health team.

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

25 June 2015 – 28 January 2016	Reviewed by a urologist and a cystoscopy identified abnormalities. He was prescribed with medication however, no significant improvements were noted.  On 22 October 2015 he was reviewed at hospital and another cystoscopy was recommended as well as repeat investigations.  On 22 January 2016 day surgery was conducted without complication. Mr X was reviewed by a specialist on 28 January 2016.
October 2015 – November 2015	Mr X reported thoughts of self-harm and was placed on Supportive Monitoring and Engagement (SME) observations due to his impulsive behaviour and food and fluid refusal. SME observations were ceased once Mr X guaranteed his safety.
6 October 2015	IHMS advised that Mr X has been mostly compliant with his medication but has threatened self-harm on numerous occasions.
22 December 2015	A DIBP Incident Report recorded that Mr X threatened self-harm.
19 January 2016 – ongoing	IHMS reported that Mr X attempted to hang himself but was 'saved by another detainee'. IHMS advised that it continued to monitor Mr X.
2 February 2016	Presented to IHMS with pain. An ultrasound identified abnormalities and he was referred for specialist review.

#### Recent detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous incidents including threatening detention centre staff, assaulting detention centre staff and other detainees, displaying aggressive abusive and violent behaviour towards detention centre staff and other detainees and damaging property.	
15 March 2015	A DIBP Incident Report recorded that Mr X made written threats of a sexual nature against detention centre staff.
8 April 2015 and 19 June 2015	DIBP Incident Reports recorded that unplanned use of force was required to prevent Mr X assaulting detention centre staff.

#### Other matters

20 July 2015	DIBP advised that Mr X was allegedly involved in an incident of property damage at Facility C. The matter was referred to the AFP who declined to investigate.
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#### Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.  Mr X's case is also 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.
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