

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 has remained in restricted immigration detention for more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1990
Ombudsman ID	1003167
Date of DIBP's reports	27 July 2015 and 25 January 2016
Total days in detention	914 (at date of DIBP's latest report)

Detention history

25 July 2013	Mr X remained in the community as an unlawful non-citizen until he was located by authorities following the expiry of his visa. He was detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Villawood Immigration Detention Centre (IDC).
17 February 2015	Transferred to Facility B.

Visa applications/case progression

2 November 2006	Arrived in Australia as the holder of a School Sector visa.
22 December 2006	Mr X applied for work rights.
29 December 2006	Granted work rights.
26 September 2007	Mr X's School Sector visa was cancelled under s 137J and he remained in the community as an unlawful non-citizen.
11 May 2009	The Department of Immigration and Citizenship revoked Mr X's visa cancellation and he was granted an associated Bridging visa valid until 18 June 2009.
15 March 2010	Student Sector visa expired.
9 August 2013	Lodged a Protection visa application with an associated Bridging visa application.
13 August 2013	Associated Bridging visa application was refused.
11 November 2013	Protection visa application refused.
18 November 2013	Appealed to the Refugee Review Tribunal (RRT).
11 December 2013	RRT affirmed original decision.
16 December 2013	Found not to meet the guidelines for referral to the former Minister under s 417.
7 January 2014	Requested judicial review by the Federal Circuit Court (FCC).
28 April 2014	FCC affirmed original decision.

23 July 2014	Mr X provided his response to the Department of Immigration and Border Protection's (DIBP) invitation to comment on the unintentional release of personal information. ¹
13 January 2015	Mr X was issued 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.
24 March 2015	Found not to be owed protection.
26 March 2015	Requested judicial review of the negative ITOA by the FCC.
28 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 was in the process of seeking legal advice in relation to the judgment and Mr X's case was adjourned.
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

6 November 2013	International Health and Medical Services (IHMS) advised that Mr X injured his ankle while playing sport. An x-ray identified soft tissue damage and he attended physiotherapy.
3 April 2014	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest. No further information was provided.
10 June 2015	Mr X was referred to a specialist counselling service after disclosing that he had been touched inappropriately by a Serco officer during a security check. IHMS advised that he declined a referral to a psychiatrist and was advised to self-refer to the mental health team as required.
20 July 2015 – 21 December 2015	IHMS reported that Mr X attended specialist counselling for management of ongoing anxiety and insomnia. His counsellor noted that Mr X's psychological wellbeing continued to be negatively affected by his restricted detention placement and recommended that Mr X's placement be reviewed as a matter of urgency.

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.

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

Detention incidents

10 June 2015	A DIBP Incident Report recorded that Mr X alleged that he had been touched inappropriately by a Serco officer during a security check. No further information was provided.
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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. He is awaiting the outcome of judicial review.

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. DIBP has advised that it is making administrative arrangements to recommence consideration of privacy breach-related claims.