

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 more than 48 months (four years).

The first report 1001514 was tabled in Parliament on 24 September 2014 and the second report 1001961 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	1980
Ombudsman ID	1002465
Date of DIBP's reports	5 May 2015, 21 October 2015 and 29 April 2016
Total days in detention	1460 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001961), Mr X has remained at Facility B.

Recent visa applications/case progression

The Department of Immigration and Border Protection (DIBP) advised that prior to ministerial intervention, Mr X was part of a cohort who had not had their protection claims assessed as they arrived in Australia and were subject to the bar under s 46A of the <i>Migration Act 1958</i> .	
27 June 2014	DIBP invited Mr X to comment on the unintentional release of personal information. ¹ He provided a response on 2 July 2014.
12 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. He was given 14 days to provide relevant information.
14 January 2015	Mr X provided his response in relation to the ITOA. On the same day he filed a notice of discontinuance with the Federal Circuit Court (FCC) withdrawing his application for an injunction preventing his removal from Australia.
12 February 2015	DIBP invited Mr X to provide further information in relation to the ITOA. On 13 February 2015 Mr X provided a response.
9 April 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
24 April 2015	Requested judicial review by the FCC.

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.

13 April 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
29 April 2016	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.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.

Health and welfare

6 January 2015 – 27 November 2015	International Health and Medical Services (IHMS) advised that Mr X attended four specialist counselling sessions.
18 March 2015	Reviewed by a rheumatology specialist who reported that Mr X's arthritis was stable and his medication was appropriate. However, it was noted that Mr X had knee, ankle and lower back pain and appropriate footwear was recommended.
July 2015	Mr X presented to a mental health assessment with frustration and anger. It was noted that he displayed depression like symptoms.
30 September 2015	Attended a consultation with a rheumatology specialist. It was reported that Mr X's arthritis was stable but some bilateral knee weakness was noted. He was provided with exercises to improve mobility and his condition was noted to be well controlled with medication.
17 March 2016	IHMS reported that Mr X continued to receive counselling from the mental health team to manage detention fatigue.

Recent detention incidents

2 January 2016	A DIBP Incident Report recorded that Mr X allegedly sexually assaulted a female detainee and the matter was referred to police.
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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 was detained on 30 April 2012 after arriving in Australia aboard Suspected Illegal Entry Vessel *Cadell* and has been held in restricted detention for over four years. He is awaiting the outcome of judicial review.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. At the time of DIBP's latest review, Mr X was awaiting an invitation to apply.

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 a notice in the HC to appeal the FFC's decision.

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