

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1983
<b>Ombudsman ID</b>	1002827
<b>Date of DIBP's reports</b>	26 June 2015 and 21 December 2015
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

22 June 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
10 April 2014	Transferred to Yongah Hill IDC.

### Visa applications/case progression

2 June 2007	Arrived in Australia as the holder of a Vocational Education and Training Sector (VETS) visa valid until 12 August 2009.
20 June 2007	Mr X applied for permission to work on his VETS visa. On the same day he was granted permission to work.
6 October 2010	Mr X was living unlawfully in the community until he was located by the Department of Immigration and Citizenship and granted a Bridging visa valid until 12 October 2010.
12 October 2010	Granted a Bridging visa on departure grounds valid until 26 October 2010.
27 October 2010 – 22 June 2013	Mr X remained unlawful in the community until he was located by New South Wales Police.
25 June 2013	Lodged a Protection visa application with an associated Bridging visa application.
18 July 2013	Associated Bridging visa application refused.
2 October 2013	Protection visa application refused.
9 October 2013	Appealed to the Refugee Review Tribunal (RRT).
7 January 2014	RRT affirmed original decision. The same day Mr X requested ministerial intervention under s 417.
9 January 2014	Found not to meet the guidelines for a referral to the former Minister under s 417.

14 July 2014	The Department of Immigration and Border Protection's (DIBP) issued Mr X with a letter inviting him to comment on the unintentional release of personal information. <sup>1</sup>
23 July 2014	Mr X provided his response in relation to the privacy breach.
14 January 2015	DIBP advised Mr X it had commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
27 January 2015	Mr X provided information in relation to the ITOA.
11 February 2015	DIBP invited Mr X to provide further information relevant to the ITOA.
14 April 2015	Found not to be owed protection.
28 April 2015	Requested judicial review by the Federal Circuit Court (FCC).
19 August 2015	The FCC adjourned Mr X's case pending a judgment before the Full Federal Court (FFC). <sup>2</sup>
21 December 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the FFC which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how this judgment will affect protection obligation processes.
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.

### **Criminal history**

22 September 2009	Mr X was charged with possessing suspected stolen goods and making a false or misleading statement.
5 November 2009	Mr X was convicted of the offences and placed on a six-month good behaviour bond.

### **Health and welfare**

22 June 2013	<p>International Health and Medical Services (IHMS) advised that during his induction health assessment Mr X reported that he had been on a methadone treatment program between 2010 and 2013 for drug dependence. IHMS advised that Mr X had not raised any concerns or experienced any further symptoms while in detention.</p> <p>A DIBP Incident Report recorded that Mr X threatened self-harm to a Serco officer during his induction process.</p>
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<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.

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

11 July 2013, 31 October 2013 and 20 November 2013	Reviewed by a rehabilitation and pain medicine consultant. No further information was provided.
8 December 2013	A DIBP Incident Report recorded that Mr X threatened self-harm by placing a razor blade in his mouth as he was upset with another detainee.
17 January 2014 – ongoing	Mr X was diagnosed with hepatitis C. Two abdominal ultrasounds returned normal results. He was referred to a gastroenterologist.
6 February 2014	Presented with finger pain. An x-ray identified normal results.
1 April 2014	Following ongoing finger pain an x-ray and ultrasound identified a fracture and he was treated with physiotherapy.
20 April 2015	Reviewed by a gastroenterologist.
20 August 2015 – ongoing	Reviewed by a liver specialist and commenced on a treatment plan. IHMS advised that Mr X's hepatitis C condition continued to be managed by the liver clinic and a general practitioner.

### Detention incidents

DIBP Incident Reports recorded that Mr X has allegedly been involved in numerous incidents including physical altercations with other detainees and threatening to assault detainees.

### Other matters

15 October 2014	DIBP advised that Mr X was identified as a person of interest in relation to an alleged assault between Mr X and another detainee. The matter was referred to the Australian Federal Police (AFP) for investigation.
27 October 2014	The AFP finalised the matter and advised that no further action would be taken. DIBP advised that Mr X ceased being a person of interest.

### 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.