

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 24 months (two years).

Name	Mr X
Citizenship	Country A
Year of birth	1962
Ombudsman ID	1003502
Date of DIBP's report	15 October 2015
Total days in detention	730 (at date of DIBP's report)

Detention history

15 October 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community and transferred to Perth Immigration Detention Centre (IDC).
3 December 2013	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point Alternative Place of Detention (APOD). ¹

Visa applications/case progression

19 June 2005	Arrived in Australia as the holder of a Tourist visa valid until 3 July 2005 using the identity of Mr Y, year of birth 1959.
30 June 2005	Lodged a Protection visa application with an associated Bridging visa application under the identity of Mr Y. On the same day he was granted an associated Bridging visa.
6 September 2005	Protection visa application refused.
29 September 2005	Appealed to the Refugee Review Tribunal (RRT).
13 December 2005	RRT affirmed original decision.
21 December 2005	Requested judicial review by the Federal Magistrates Court (FMC).
23 December 2005	Granted another associated Bridging visa.
21 November 2006	FMC affirmed original decision.
19 December 2006	Following the expiry of his Bridging visa Mr X remained in the community as an unlawful non-citizen under the identity of Mr Y.
15 October 2013	Mr X (under the identity of Mr Y) was located by the Western Australia Police and detained under s 189(1).

¹ DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

16 October 2013	Mr X informed the Department of Immigration and Border Protection (DIBP) that he intended to return voluntarily to Country A.
7 November 2013	Lodged a Protection visa application with an associated Bridging visa application.
19 November 2013	The Consulate of Country A advised DIBP of Mr X's real identity, and that his claimed identity of Mr Y and the passport issued in that name were false. Mr X subsequently admitted his true identity to DIBP.
5 December 2013	Associated Bridging visa application refused.
10 January 2014	Lodged a Bridging visa application.
28 January 2014	Bridging visa application refused.
5 March 2014	Protection visa application refused.
14 March 2014	Appealed to the RRT.
4 April 2014	Mr X requested removal from Australia to Country A.
8 April 2014	Withdrew his application from the RRT.
9 April 2014	Withdrew his request for removal.
7 April 2015	DIBP finalised Mr X's International Treaties Obligations Assessment (ITOA), finding that the circumstances of his case did not engage Australia's <i>non-refoulement</i> obligations.
9 April 2015	Mr X requested judicial review of the negative ITOA by the Federal Circuit Court (FCC).
15 October 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the 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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has not required treatment for any major mental health issues.	
9 July 2015	Mr X was reviewed by an audiologist following hearing difficulties. An audiogram identified mild hearing loss and tinnitus. He was referred to an ear, nose and throat clinic for a radiological assessment and a possible hearing aid trial. IHMS advised that this appointment was outstanding at the time of its report.

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

Other matters

15 October 2013	Mr X (under the identity of Mr Y) was arrested by the Western Australia Police in connection with a criminal matter. He was not charged and the matter was finalised.
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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 advised that it is reviewing how this judgment will affect protection obligation processes.