

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X who has remained in restricted immigration detention for more than 36 months (three years).

The first report 1002257 was tabled in Parliament on 9 September 2015. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1003264
Date of DIBP's reports	19 August 2015 and 13 February 2016
Total days in detention	1,094 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002257), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

30 March 2015	Mr X withdrew his request for judicial review at the Full Federal Court (FFC).
9 June 2015	Mr X was invited to comment on information relevant to an International Treaties Obligations Assessment (ITOA). On 23 June 2015 he provided a response.
19 August 2015	The Department of Immigration and Border Protection (DIBP) finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
28 August 2015	Requested judicial review at the Federal Circuit Court (FCC).
28 October 2015	Mr X attended a directions hearing at the FCC, however the matter was adjourned as Mr X's case is affected by the judgment handed down on 2 September 2015 by the FFC ¹ which found that the ITOA process was procedurally unfair.
13 February 2016	DIBP advised that Mr X's case has been identified for assessment against the guidelines under s 195A for the possible grant of a Bridging visa.
21 March 2016	The Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.

¹ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Health and welfare

23 May 2015	International Health and Medical Services advised that during a mental health assessment, Mr X presented with low mood related to situational stressors at Yongah Hill IDC. Mr X advised that he participates in activities to manage his mental health.
29 July 2015	Mr X was reviewed by the mental health team (MHT) and no further concerns were reported. He was advised to self-refer to the MHT as required.

Ombudsman assessment/recommendation

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. On 21 March 2016 the Minister filed an application in the HC for special leave to appeal the FFC's decision.

In Mr X's previous report, the Ombudsman noted that Mr X was receiving treatment for mental health concerns related to his placement at Yongah Hill IDC and recommended that DIBP consider transferring Mr X to Maribyrnong IDC to be closer to his support network.

The former Assistant Minister advised that DIBP had considered this request but was unable to facilitate relocation due to security and capacity concerns.

The Ombudsman notes that Mr X has continued to experience mental health concerns related to his placement at Yongah Hill IDC during this reporting period. The Ombudsman again recommends that consideration be given to transferring Mr X to a detention facility in Melbourne to be closer to his support network while he awaits resolution of his immigration status.