

## 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>	1966
<b>Ombudsman ID</b>	1003372
<b>Date of DIBP's reports</b>	1 September 2015 and 22 February 2016
<b>Total days in detention</b>	914 (at date of DIBP's latest report)

### Detention history

22 August 2013	Detained under s 189(1) of the <i>Migration Act</i> 1958 after living unlawfully in the community. He was transferred to Villawood Immigration Detention Centre (IDC).
10 April 2014	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point Alternative Place of Detention (APOD).
29 April 2015	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point APOD.

### Visa applications/case progression

31 July 2002	Arrived in Australia on a Tourist visa.
31 October 2002	Tourist visa expired.
22 August 2013	The Department of Immigration and Border Protection (DIBP) advised that when Mr X was located in the community, he admitted to entering Australia on a false Country B passport.
11 September 2013	Lodged a Protection visa application with an associated Bridging visa.
13 September 2013	Associated Bridging visa refused.
3 October 2013	Interview conducted in relation to Protection visa application.
21 October 2013	Mr X provided DIBP with his Country A identification card.
11 November 2013	Protection visa application refused.
12 November 2013	DIBP confirmed Mr X's identity. The same day Mr X appealed to the Refugee Review Tribunal (RRT).
11 March 2014	RRT affirmed original decision.

14 July 2014	DIBP notified Mr X of the unintentional release of personal information. <sup>1</sup>
14 January 2015	DIBP invited Mr X to comment on the privacy breach.
27 January 2015	Mr X provided his response.
17 February 2015	DIBP invited Mr X to comment on country and other information relevant to an International Treaties Obligation Assessment (ITOA).
18 February 2015	He provided a response.
25 March 2015	DIBP finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
20 April 2015	Requested judicial review of the ITOA decision by the Federal Circuit Court (FCC).
1 September 2015	DIBP advised that the FCC had scheduled a hearing for 25 August 2015 which was adjourned. A new date is yet to be scheduled.
22 February 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) <sup>2</sup> which found that the ITOA process was procedurally unfair. DIBP further 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

International Health and Medical Services (IHMS) reported that Mr X has not presented with any significant mental health concerns and he is aware of the self-referral process.	
8 October 2013	A computed tomography scan of Mr X's spine identified abnormalities. He was referred for physiotherapy and prescribed with pain relief medication.
20 February 2014 – 21 October 2014	Attended 18 physiotherapy sessions.
3 April 2014	A DIBP Incident Report recorded that Mr X refused food and fluid.
1 July 2014	Referred to a neurosurgery spinal clinic.
3 August 2015	IHMS advised that an appointment with the neurosurgery spinal clinic was scheduled but Mr X could not attend as he was transferred to Wickham Point APOD. IHMS did not advise if a new referral had been requested but no further concerns had been raised.

<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.

**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.