

## 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 42 months (three and a half years).

The first report 1001472 was tabled in Parliament on 9 July 2014 and the second report 1001879 was tabled in Parliament on 18 March 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1990
<b>Ombudsman ID</b>	1002328
<b>Date of DIBP's reports</b>	19 March 2015 and 14 September 2015
<b>Total days in detention</b>	1,277 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001879), Mr X has remained at Facility R.

### Recent visa applications/case progression

14 January 2015	The Department of Immigration and Border Protection (DIBP) advised Mr X that his protection claims would be reassessed as part of a new International Treaties Obligations Assessment (ITOA) to determine whether there are any <i>non-refoulement</i> obligations preventing DIBP from processing removal arrangements.
3 February 2015	Mr X requested voluntary removal to Country A.
5 February 2015	DIBP lodged an application for travel documents with the High Commission of Country A.
10 February 2015	Mr X withdrew his request for removal.
17 February 2015	He provided a response to DIBP in relation to the ITOA.
10 March 2015	DIBP invited Mr X to comment on country information and other information relevant to the ITOA.
19 March 2015	DIBP advised that he was still awaiting the outcome of his request for ministerial intervention under s 417 of the <i>Migration Act 1958</i> . DIBP further advised that the outcome was pending the completion of the ITOA.
15 April 2015	DIBP finalised the ITOA in relation to the privacy breach <sup>1</sup> and found that Mr X's case does not engage Australia's <i>non-refoulement</i> obligations and the matter was finalised.

<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.

7 May 2015	Requested judicial review by the Federal Circuit Court (FCC) in relation to the ITOA decision.
22 June 2015	Mr X requested voluntary removal to Country A.
23 June 2015	He was provided with information from the International Organization for Migration about voluntary removal to Country A.
24 June 2015	The FCC held a directions hearing and Mr X's matter was listed for hearing on 18 November 2015.
22 July 2015	The Minister declined to intervene under s 417.
14 September 2015	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 is in the process of seeking legal advice in relation to the judgment.

### Health and welfare

15 and 16 January 2015	International Health and Medical Services (IHMS) advised that Mr X attended a consultation with a urologist. He was scheduled for day surgery to have a procedure to improve his kidney function and prevent any urinary obstructions.
28 July 2015	Attended a pre-admission appointment at the hospital prior to his scheduled surgery.
4 August 2015	Mr X underwent surgery and had a stent inserted in his kidney to prevent obstruction. IHMS advised he recovered well from the procedure and was managed by the IHMS general practitioner and nurses.
22 August 2015	IHMS advised that a follow up appointment with the urology outpatient department was scheduled for 27 August 2015.

### Information provided by Mr X

During an interview with Ombudsman staff at Facility R on 2 September 2015 Mr X advised he was awaiting the outcome of his request for judicial review. He said he saw his DIBP case manager on a regular basis.

Mr X said he had a kidney operation two weeks earlier and would not require any further surgery. He said he still had a problem with pain but IHMS had prescribed him with pain relief medication and this was sufficient to manage his pain.

He said he did not have any issues with the detention facilities except that he would like an exemption from taking part in activities. He explained that because he was sick he could not take part in activities and that precluded him from acquiring additional points.<sup>3</sup> He said he had tried to obtain an exemption from IHMS but was unsuccessful.

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

<sup>3</sup> Section 6, Clause 5.6 of the *Immigration Detention Facilities and Detainee Services Contract* stipulates that Serco must implement and manage DIBP's approved Individual Allowance Programme (IAP) in each detention facility. Through the IAP, detainees are allocated points that can be exchanged for a variety of goods on offer, such as telephone cards, tobacco and snack food, at the facility shop managed by Serco.

**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 seeking legal advice in relation to the judgment.