

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 a cumulative period of more than 36 months (three years).

The first report 1002004 was tabled in Parliament on 13 May 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	1992
Ombudsman ID	1002500
Date of DIBP's reports	13 May 2015 and 9 November 2015
Total days in detention	1,095 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002004), Mr X has remained at Yongah Hill Immigration Detention Centre.

Recent visa applications/case progression

30 April 2015	Mr X provided his response to the Department of Immigration and Border Protection's (DIBP) invitation to comment on the unintentional release of personal information. ¹
13 May 2015	DIBP advised that Mr X's identity has not been confirmed and is under investigation.
20 May 2015	DIBP notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
16 June 2015	DIBP invited Mr X to comment on country and other information relevant to the ITOA.
25 June 2015	He provided a response in relation to the ITOA.
2 September 2015	DIBP finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
29 September 2015	Requested judicial review by the Federal Circuit Court. A hearing was scheduled for 15 December 2015.
9 November 2015	DIBP advised that Mr X has been identified as a person of interest for his alleged involvement in criminal matters in Australia and overseas. DIBP further advised that Mr X's identity assessment remains indeterminate.

¹ 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.

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) ² which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.

Other legal matters

18 June 2013	Mr X appeared before the Burwood Local Court after being charged with a criminal offence. The matter was dismissed and no conviction was recorded. ³
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Health and welfare

2 December 2014 – 25 May 2015	International Health and Medical Services (IHMS) reported that Mr X did not present with any significant mental health concerns during this reporting period.
18 April 2015	Mr X was taken to a hospital by ambulance to review his severe abdominal pain and was discharged the same day. IHMS did not receive any documentation about his treatment.
20 May 2015	Attended a speech pathologist review. Mr X was provided with strategies to reduce his stutter which was triggered by anger, fear and stress. No further sessions were recommended and Mr X had not raised any further concerns.
26 May 2015 – 19 October 2015	He attended routine mental health assessments and his depression and post-traumatic stress disorder were considered to be stable.

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

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

³ DIBP did not provide this information in Mr X's 24-month s 486N review dated 12 November 2014.