

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 1001582 was tabled in Parliament on 29 October 2014 and the second report 1002051 was tabled in Parliament on 27 May 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1976
Ombudsman ID	1002601
Date of DIBP's reports	2 June 2015 and 14 December 2015
Total days in detention	1,292 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002051), Mr X remained at Perth Immigration Detention Centre (IDC).	
12 January 2015	Transferred to Yongah Hill IDC.
22 September 2015	Transferred to Perth IDC.

Recent visa applications/case progression

14 January 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X that it had commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
16 February 2015 and 15 May 2015	Mr X provided information in relation to the ITOA.
15 July 2015	DIBP finalised the ITOA for Mr X in relation to the privacy breach and found that his case did not engage Australia's <i>non-refoulement</i> obligations.
23 July 2015	Requested judicial review by the Federal Circuit Court. A directions hearing was scheduled for 21 June 2016.
26 November 2015	Found not to meet the guidelines for a referral to the Minister under s 195A of the <i>Migration Act 1958</i> for consideration of a Bridging visa.
14 December 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) ¹ which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how this judgment will affect protection obligation processes.

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

February 2016	DIBP 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.
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Health and welfare

6 December 2014 – ongoing	International Health and Medical Services (IHMS) advised that during this reporting period Mr X was prescribed with medication for his back condition and received physiotherapy on two occasions. He has also been provided with back exercises to manage his pain and is monitored by a general practitioner (GP).
25 May 2015	Presented to the mental health team (MHT) with low mood following his transfer from Perth IDC to Yongah Hill IDC. Mr X reported that his low mood was a result of his inability to have regular contact with his three children who are located in Perth. He was provided with counselling but declined antidepressant medication. He was advised to self-refer to the MHT or GP as required.
11 August 2015	Presented at a routine mental health assessment with low mood as a result of situational stressors. No further information was provided.
29 October 2015	Referred to a specialist to remove a benign cyst on his back. IHMS advised that an appointment remained outstanding and noted that a lengthy wait is likely.

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.