

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).

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1003373
Date of DIBP's reports	24 August 2015 and 22 February 2016
Total days in detention	914 (at date of DIBP's latest report)

Detention history

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

Visa applications/case progression

1 October 2007	Arrived in Australia as the holder of a Vocational Education and Training Sector (VETS) visa valid until 13 November 2009. He was granted work rights on 7 October 2007.
8 September 2009	Lodged a VETS visa application. He was granted a Bridging visa the same day.
13 October 2009	Granted a second VETS visa valid until 9 December 2010.
9 December 2010	Lodged a Skilled Graduate visa application. He was granted a Bridging visa the same day.
18 July 2011	Granted a Bridging visa with offshore travel rights.
24 July 2011	Mr X departed Australia and returned on 6 August 2011.
16 January 2012	Skilled Graduate visa application refused.
30 January 2012	Appealed to the Migration Tribunal (MRT).
19 October 2012	MRT affirmed original decision.
12 November 2012	Requested ministerial intervention under s 351.
27 November 2012	Mr X's Bridging visa ceased following the MRT decision.
28 November 2012 – 11 April 2013	Mr X was granted six consecutive Bridging visas.
23 January 2013	Mr X's case was referred on a ministerial submission for consideration under s 351.

7 February 2013	The Department of Immigration and Border Protection (DIBP) advised that the ministerial submission was returned with no decision made.
19 March 2013	Mr X's case was referred on a second ministerial submission for consideration under s 351.
22 March 2013	The former Minister declined to intervene under s 351.
11 April 2013	Granted a Bridging visa valid until 18 April 2013 on departure grounds. DIBP advised that Mr X failed to depart Australia.
22 August 2013	Detained under s 189(1) and transferred to Villawood IDC.
6 September 2013	Requested ministerial intervention under s 351.
19 September 2013	Found not to meet the guidelines for referral to the former Minister under s 351.
27 September 2013	Lodged a Protection visa application with an associated Bridging visa application.
1 October 2013	Associated Bridging visa application refused.
2 October 2013	Appealed to the MRT.
14 October 2013	MRT affirmed original decision.
30 October 2013	Attended an interview in relation to his Protection visa application.
11 November 2013	Protection visa application refused.
12 November 2013	Appealed to the Refugee Review Tribunal (RRT).
25 November 2013 – 13 January 2015	DIBP advised that Mr X lodged nine Bridging visa applications (dates not provided). One application was deemed invalid and the remainder were refused. DIBP further advised that Mr X appealed to the MRT (dates not provided) and all refusals were affirmed.
20 March 2014	Mr X requested an injunction in the Federal Circuit Court (FCC) to prevent his removal from Australia. He cited the privacy breach caused by the unintentional release of his personal information through DIBP's website as the basis for his application. ¹
24 April 2014	RRT affirmed original decision.
29 April 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
30 April 2014	Requested judicial review by the FCC.
27 June 2014	DIBP invited Mr X to comment on the privacy breach.
3 July 2014	FCC dismissed the appeal of the RRT decision.
8 July 2014	Mr X provided his response.
21 July 2014	Requested judicial review by the Full Federal Court (FFC).

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.

1 October 2014	Mr X was issued with a letter notifying him 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.
9 October 2014	Requested ministerial intervention under s 48B. DIBP advised that the request remains outstanding, pending the finalisation of the ITOA.
13 November 2014	Requested an urgent injunction in the Federal Court (FC) to prevent his transfer from Villawood IDC.
28 November 2014	DIBP invited Mr X to comment on country information in relation to the ITOA.
11 December 2014	Mr X provided a response in relation to the ITOA.
23 January 2015	FFC dismissed the appeal of the FCC dismissal.
30 January 2015	FC refused to grant an injunction.
9 February 2015	DIBP invited Mr X to provide further information in relation to the ITOA.
13 February 2015	Mr X provided DIBP with further information in relation to the ITOA.
20 February 2015	Lodged an application for special leave to appeal to the High Court (HC).
30 March 2015	Withdrew his request for an injunction in the FCC.
19 June 2015	HC refused to grant special leave.
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) ² 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

9 October 2013	International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist and diagnosed with anxiety and depression. The psychiatrist noted that his symptoms were related to his ongoing detention and situational stressors and recommended that he be considered for a community detention placement. He was initially prescribed with antidepressant medication, but had since ceased the medication (date not provided).
31 October 2013	Presented with ongoing tinnitus and associated dizziness. A magnetic resonance imaging scan identified abnormalities and he was referred to a neurologist.
19 February 2014 and 23 June 2014	Attended appointments with a neurologist and no abnormalities were identified.

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

3 April 2014	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
7 September 2015	Presented to a general practitioner with heartburn and reflux symptoms. Pathology testing identified an infection and he was prescribed with medication.
28 December 2015	Referred for physiotherapy after presenting with lower back pain.
7 January 2016	Attended an initial physiotherapy consultation.
14 January 2016	Referred for pathology testing after presenting with further symptoms of heartburn and reflux.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. His protection claims are being reassessed under an ITOA.

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.