

**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	1983
Ombudsman ID	1003275
Date of DIBP's reports	24 August 2015 and 15 February 2016
Total days in detention	913 (at date of DIBP's latest report)

Detention history

28 June 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia aboard Suspected Illegal Entry Vessel (SIEV) 360 <i>Narko</i> . He was transferred to Christmas Island Immigration Detention Centre (IDC).
3 August 2012	Transferred to Wickham Point Alternative Place of Detention (APOD).
11 October 2012	Granted a Bridging visa and released from detention.
28 November 2013	Re-detained under s 189(1) following criminal charges. He was transferred to Villawood IDC.
10 April 2014	Transferred to Yongah Hill IDC.
24 March 2015	Transferred to Wickham Point APOD.

Visa applications/case progression

7 August 2012	The former Minister lifted the bar under s 46A to allow Mr X to lodge a valid visa application.
11 October 2012	Granted a Bridging visa valid until 22 November 2012.
20 November 2012	Lodged a Protection visa application and granted a further Bridging visa.
8 February 2013	Attended an interview in relation to his Protection visa application.
4 March 2013	Protection visa application refused.
14 March 2013	Appealed to the Refugee Review Tribunal (RRT).
28 November 2013	The former Minister cancelled Mr X's Bridging visa under s 116 following criminal charges.
29 November 2013	Appealed to the Migration Review Tribunal (MRT).
11 December 2013	MRT affirmed original decision.
23 January 2014	RRT affirmed original decision.
28 January 2014	Found not to meet the guidelines for referral to the former Minister under s 417.

19 February 2014	Requested judicial review by the Federal Circuit Court (FCC).
March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information. ¹
11 July 2014	DIBP invited Mr X to comment the privacy breach. He provided a response on 14 July 2014.
13 July 2014	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.
7 May 2015	FCC affirmed original decision.
22 June 2015	Mr X signed a request for removal from Australia. DIBP advised that his removal is on hold as he has ongoing matters before DIBP.
30 July 2015	DIBP invited Mr X to comment on country information and other information in relation to the ITOA.
5 August 2015	Mr X was granted an extension until 14 September 2015 to provide a response for the ITOA.
15 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 a notice in the High Court (HC) to appeal the FFC's decision.

Criminal history

28 November 2013	Mr X was charged with alcohol-related and unlicensed driving offences.
19 March 2014	He was convicted and fined \$700.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has not required treatment for any major mental health issues.	
30 December 2013 – ongoing	Mr X presented with a history of varicose veins and was reviewed by vascular specialists. Scheduled surgery was cancelled following his transfer to another detention facility and he has since been placed on a new waiting list. IHMS advised that he has received treatment from health professionals and his pain is managed with regular pain relief medication.

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.

² *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 an ITOA.

DIBP advised that Mr X's request for voluntary removal is on hold as he has ongoing matters before DIBP.

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 a notice in the HC to appeal the FFC's decision.