

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 X¹ who has remained in immigration detention for a cumulative period of more than 72 months (six years).

The first report 1123/12 was tabled in Parliament on 26 June 2013 and the second report 1001160 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.

Name	Mr X
Citizenship	Country A
Year of birth	1992
Ombudsman ID	1002223
Date of DIBP's reports	2 February 2015, 7 August 2015 and 2 February 2016
Total days in detention	2186 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001160), Mr X remained at Villawood Immigration Detention Centre (IDC).	
8 April 2015	Transferred to Christmas Island IDC.
6 September 2015	Transferred to Yongah Hill IDC.
10 September 2015	Transferred to Christmas Island IDC.
1 October 2015	Transferred to Yongah Hill IDC.

Recent visa applications/case progression

24 September 2014	The Department of Immigration and Border Protection (DIBP) issued Mr X with a letter inviting him to comment on the unintentional release of personal information. ²
9 December 2014	DIBP advised that Mr X was no longer considered a person of interest as his criminal charges were withdrawn.
16 December 2014	Mr X provided his response to the privacy breach.
18 December 2014	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa. No further information was provided by DIBP about the outcome of this referral.

¹ Mr X's name was previously recorded as Mr Y until DIBP's review of 2 February 2016, which recorded it as Mr X.

² 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.

15 January 2015	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.
27 February 2015	DIBP invited Mr X to provide further information relevant to the ITOA.
31 March 2015 and 21 April 2015	Mr X provided responses in relation to the ITOA.
15 June 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
27 July 2015	DIBP lodged an Emergency Travel Document application with the Country A High Commission on behalf of Mr X to enable his involuntary removal.
6 September 2015	Appealed negative ITOA decision to the Federal Circuit Court (FCC).
28 October 2015	The FCC adjourned Mr X's case.
2 February 2016	DIBP advised that Mr X is on a removal pathway. However, his case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ³ 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.

Health and welfare

April 2015 – 27 July 2015	International Health and Medical Services (IHMS) advised that Mr X declined medication and counselling for mental health issues following his transfer to Christmas Island IDC. He was placed on Supportive Monitoring and Engagement observations after IHMS observed that he was becoming withdrawn and isolating himself.
23 April 2015	Mr X disclosed a history of torture and trauma but declined specialist counselling.
29 April 2015	A DIBP Incident Report recorded that Mr X threatened self-harm during an interview with DIBP.
7 May 2015	Reviewed by a psychiatrist who reported that Mr X presented with reactive depression and distress as a result of his prolonged detention.
17 June 2015	Mr X received negative news and declined contact with IHMS.
28 July 2015	Mr X attended a review with the mental health team (MHT) who reported that he appeared to have low mood, difficulty sleeping and reduced appetite. He was referred for specialist counselling and prescribed with antidepressant medication. IHMS advised that he was transferred to Yongah Hill IDC before he could attend counselling.

³ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

11 January 2016	IHMS advised that Mr X failed to attend two mental health assessments in October 2015 and had not been reviewed by the MHT since his transfer to Yongah Hill IDC.
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Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

DIBP advised that Mr X is on a removal pathway but his case is 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.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose. In the case of Mr X, he has remained in restricted immigration detention for a cumulative period of more than six years and IHMS has reported that his mental health continues to be a concern.

The Ombudsman recommends that Mr X's case be assessed for referral to the Minister for his consideration to grant a Bridging visa.