

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	1981
Ombudsman ID	1002232-O
Date of DIBP's reports	19 November 2015 and 19 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

19 November 2013	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Maribyrnong Immigration Detention Centre (IDC).
27 June 2014	Transferred to Yongah Hill IDC.
19 April 2015	Transferred to Maribyrnong IDC.
23 April 2015	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point Alternative Place of Detention.

Visa applications/case progression

Mr X arrived in Australia on 4 January 2009 as the holder of a Higher Education Sector visa. His visa was cancelled on 15 September 2010 for non-attendance and he sought judicial review, but ultimately the cancellation was upheld.	
17 July 2012	Granted a Bridging visa valid until 24 July 2012.
19 November 2013	Mr X remained in the community as an unlawful non-citizen until he was located and detained under s 189(1).
3 December 2013	Lodged a Protection visa application which was refused on 11 February 2014.
3 December 2013 – 22 December 2015	Lodged eight applications for a Bridging visa. Mr X withdrew two of his applications and six were refused.
19 February 2014	Appealed to the Refugee Review Tribunal (RRT).

12 March 2014	DIBP notified Mr X of the unintentional release of personal information ¹ and advised that the privacy breach would be taken into account when considering his protection claims.
11 April 2014	RRT affirmed original decision.
8 May 2014	Requested judicial review by the Federal Circuit Court (FCC).
18 June 2015	FCC dismissed Mr X's application for judicial review.
8 July 2015	DIBP issued Mr X 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 July 2015	Appealed FCC decision to the Federal Court (FC).
2 September 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
23 September 2015	Requested judicial review of the negative ITOA decision by the FCC.
19 November 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) ² which found that the ITOA process was procedurally unfair.
10 December 2015	The FCC adjourned the review of Mr X's ITOA pending the outcome of any appeal against the FFC's decision.
15 January 2016	FC dismissed Mr X's appeal.
8 February 2016	Lodged an application for special leave to appeal the FC's decision to the High Court (HC). Mr X subsequently withdrew the application.
27 July 2016	The Minister appealed the FFC decision and the HC found that the ITOA process was not procedurally unfair.

Health and welfare

International Health and Medical Services advised that Mr X has not required treatment for any major physical or mental health issues.

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.

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.