

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	1960
Ombudsman ID	1003383
Date of DIBP's reports	1 September 2015 and 26 February 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

28 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).
6 April 2014	Transferred to Facility B.

Visa applications/case progression

28 October 1998	Arrived in Australia on an Electronic Travel Authority visa valid until 28 January 1999. The Department of Immigration and Border Protection (DIBP) advised that Mr X entered Australia with a fraudulent passport under the name of Country C national, Mr Y.
9 December 1998	Lodged a Protection visa application under the name of Mr Y. He was granted a Bridging visa the same day.
11 January 1999	Protection visa application refused.
29 January 1999	Appealed to the Refugee Review Tribunal (RRT).
10 December 1999	RRT affirmed original decision.
13 December 1999	Found not to meet the guidelines for referral to the former Minister under s 417.
14 January 2000	Bridging visa expired and Mr X remained unlawfully in the community.
16 April 2009	Lodged a Bridging visa application under the name of Mr X.
17 April 2009	Mr X and his partner, Ms Z, requested ministerial intervention under s 417.
1 May 2009	DIBP advised that Mr X presented to the Department of Immigration and Citizenship (DIAC) and advised that he had entered Australia on a fraudulent passport. To support his identity, Mr X provided DIAC with his Country A passport and other documentation.

1 May 2009 – 1 July 2011	Granted multiple consecutive Bridging visas.
9 September 2009	DIAC confirmed that the documentation provided by Mr X was genuine.
4 August 2010	The former Minister declined to intervene under s 417.
28 August 2013	Detained under s 189(1) and transferred to Villawood IDC.
23 September 2013	Lodged a Protection visa application with an associated Bridging visa application.
25 September 2013	Associated Bridging visa application refused.
30 October 2013 – 18 February 2014	Mr X lodged four Bridging visa applications which were refused.
14 March 2014	Attended an interview in relation to his Protection visa application.
23 April 2014	Protection visa application refused.
29 April 2014	Appealed to the RRT.
23 May 2014	RRT affirmed original decision.
3 June 2014 and 30 July 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
14 January 2015	An International Treaties Obligations Assessment (ITOA) was commenced to assess whether the circumstances of Mr X's case engage Australia's <i>non-refoulement</i> obligations.
23 March 2015	DIBP finalised the ITOA, determining that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
26 March 2015	Requested judicial review by the Federal Circuit Court (FCC).
5 August 2015	Appeared before the FCC.
1 September 2015	DIBP advised that Mr X was identified to be affected by the unintentional release of personal information. ¹
26 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 an application in the High Court (HC) for special leave to appeal the FFC's decision.

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.

Criminal history

28 August 2013	Mr X was charged with two counts of assault following a domestic dispute. He was transferred to L Police Station and granted bail to appear in court.
6 September 2013	Mr X appeared before the D Local Court and was convicted with two counts of assault occasioning actual bodily harm. He received an eight-month suspended sentence on entering a good behaviour bond. He was also convicted of stalking/intimidation and received a three-month suspended sentence on entering a good behaviour bond.

Health and welfare

August 2013 – ongoing	International Health and Medical Services (IHMS) advised that Mr X presented with recurring abdominal pain related to a previous traffic accident. An ultrasound was unable to confirm the cause of the pain and he was prescribed with medication. Mr X reported a history of heart disease and was prescribed with medication.
21 February 2014	During a review with a psychiatrist, Mr X presented with reduced motivation, anxiety, low mood and poor concentration and advised that he experiences hallucinations when stressed. He was diagnosed with depression and anxiety and prescribed with medication. IHMS advised that he subsequently ceased the medication as no improvement was noted.
17 March 2014 – 24 March 2014	Attended three physiotherapy sessions for management of back pain.
3 April 2014	A DIBP Incident Report recorded that Mr X refused food and fluid as a form of protest.
25 May 2014	Admitted to hospital after presenting with chest pain and difficulty breathing. He was assessed by a cardiologist and diagnosed with musculoskeletal chest pain. He was discharged into the care of a general practitioner.
25 September 2014	Presented with a facial lesion and was referred to a plastic surgeon for assessment.
23 February 2015	A biopsy of the facial lesion was conducted with no abnormalities identified.
16 August 2015 – ongoing	IHMS reported that Mr X attends routine mental health assessments and has been advised to self-refer to the mental health team as required.
22 October 2015 – 16 December 2015	Presented with recurring neck and shoulder pain and was prescribed with medication. An ultrasound identified tendonitis and degenerative abnormalities. He attended physiotherapy.

Detention incidents

DIBP Incident Reports recorded that Mr X allegedly displayed aggressive and abusive behaviour towards detention centre staff on multiple occasions.	
28 November 2015	A DIBP Incident Report recorded that use of force was required to restrain Mr X after he allegedly became abusive and aggressive towards Serco officers. DIBP advised that Mr X was transferred to a behavioural management unit and assessed by IHMS.

Case status

<p>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.</p> <p>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 an application in the HC for special leave to appeal the FFC's decision.</p>
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