

# 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 X who has remained in restricted immigration detention for more than 42 months (three and a half years).

The first report 1001559 was tabled in Parliament on 1 October 2014 and the second report 1002043 was tabled in Parliament on 14 April 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A and Country B (born in Country A)
<b>Year of birth</b>	1976
<b>Ombudsman ID</b>	1002539
<b>Date of DIBP's reports</b>	27 May 2015 and 24 November 2015
<b>Total days in detention</b>	1,278 (at date of DIBP's latest report)

## Recent detention history

Since the Ombudsman's previous report (1002043), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

## Recent visa applications/case progression

13 January 2015	Mr X was advised of the commencement of an International Treaties Obligations Assessment (ITOA) to reassess his protection claims and whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
25 March 2015	The Department of Immigration and Border Protection (DIBP) invited Mr X to provide further information in relation to the ITOA.
8 April 2015	Mr X's migration agent requested an extension of time to provide further information in relation to the ITOA. Mr X was granted an extension until 8 May 2015, however DIBP advised that no response was received.
24 November 2015	<p>DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC)<sup>1</sup> which found that the ITOA process was procedurally unfair. DIBP further advised that it is reviewing how the judgment will affect protection obligation processes.</p> <p>DIBP advised that Mr X's case was being assessed against the guidelines under s 195A of the <i>Migration Act 1958</i> for consideration to grant a Bridging visa. DIBP also advised that his request of 28 July 2014 for ministerial intervention under ss 417 and 48B remained outstanding.</p>

<sup>1</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

## Health and welfare

13 January 2015	International Health and Medical Services (IHMS) advised that Mr X reported ongoing sleeping difficulties and worries during a consultation with a psychiatrist. He advised that he would like to reside in Adelaide to be closer to his family support network.  The psychiatrist noted that Mr X did not present with any depressive symptoms and no further treatment was required.
17 February 2015, 25 May 2015 and 6 August 2015	Reviewed by the mental health team with no significant mental health concerns identified.
7 September 2015	Prescribed with pain relief medication after injuring his ankle. An x-ray identified a soft tissue injury and bandages were provided to reduce swelling.
2 October 2015	A DIBP case review concluded that Mr X's current placement at Yongah Hill IDC is appropriate.

## Other matters

DIBP advised that Mr X has been identified as a person of interest in relation to his alleged involvement in criminal activities offshore.

## Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X advised that his mental health had improved significantly over the past 12 months and he no longer takes antidepressant medication. However, in relation to conditions at Yongah Hill IDC he said that he avoids certain detainee groups and hopes he will not get hurt.

Mr X said that he would like to be transferred to Adelaide Immigration Transit Accommodation (ITA) to be closer to his family. If this could not be facilitated he would like to be transferred to Melbourne ITA due to its proximity to Adelaide.

### **Ombudsman assessment/recommendation**

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 ministerial intervention requests under ss 417 and 48B submitted on 28 July 2014.

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 reviewing how the judgment affects protection obligation processes.

The Ombudsman notes Mr X has again requested to be transferred to Adelaide ITA but that DIBP has advised that, according to the latest case review of 2 October 2015, Mr X's current placement is appropriate. The Ombudsman further notes that IHMS had previously recommended that Mr X not be transferred to Adelaide ITA due to his reported escalating mental health concerns and the lack of services at Adelaide ITA.

The Ombudsman notes that in the past 12 months IHMS has reported that Mr X has not presented with any significant mental health concerns. Given the improvement in Mr X's mental health and ongoing isolation from his relatives in his current placement at Yongah Hill IDC, the Ombudsman recommends that consideration again be given to transferring Mr X to Adelaide ITA or Melbourne ITA so he is nearer to his family support network while he awaits resolution of his immigration status.