

**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	1964
Ombudsman ID	1002239-O
Date of DIBP's reports	27 November 2015 and 27 May 2016
Total days in detention	912 (at date of DIBP's latest report)

Detention history

27 November 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).
11 April 2014	Transferred to Wickham Point Alternative Place of Detention.

Visa applications/case progression

13 July 1996	Arrived in Australia as the holder of a Tourist visa valid until 13 October 1996.
27 September 1996	Lodged a Protection visa application with an associated Bridging visa application. On the same day he was granted an associated Bridging visa.
16 May 1997	Protection visa application refused.
18 June 1997	Appealed to the Refugee Review Tribunal (RRT).
24 March 1998 and 9 February 1999	Found not to meet the guidelines for referral to the former Minister under s 417.
26 February 1999	RRT affirmed original decision.
17 March 1999	Mr X's Bridging visa expired and he remained in the community as an unlawful non-citizen.
29 November 2013	Lodged a Protection visa application with an associated Bridging visa application.
3 December 2013	Associated Bridging visa application refused.
13 January 2014	Lodged an associated Bridging visa application.
14 January 2014	Associated Bridging visa application refused.

12 March 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of the unintentional release of personal information. ¹
19 August 2014	Protection visa application refused.
26 August 2014	Appealed to the RRT.
15 September 2014	RRT affirmed original decision.
18 September 2014	Found not to meet the guidelines for referral to the former Minister under s 417.
1 October 2014	Requested judicial review by the Federal Circuit Court (FCC).
20 January 2015	DIBP invited Mr X to comment on the privacy breach. He provided a response on 19 February 2015.
17 April 2015	FCC upheld original decision.
14 May 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.
1 June 2015	DIBP invited Mr X to provide further information in relation to the ITOA. Mr X did not provide a response.
6 August 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
12 August 2015	Requested judicial review of the 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. The FCC adjourned the review of Mr X's ITOA pending the outcome of any appeals against the FFC's decision.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.

Health and welfare

3 April 2014	A DIBP Incident Report recorded that Mr X was allegedly involved in a mass protest involving food and fluid refusal. The protest was against the transfer of detainees to other centres.
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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.

17 April 2014 – ongoing	<p>International Health and Medical Services (IHMS) advised that Mr X presented with symptoms of hyperthyroidism and an ultrasound of his thyroid identified multiple nodules. Mr X was treated and referred to an endocrinologist.</p> <p>In June 2014 a nuclear scan identified that Mr X had an enlarged thyroid gland and he was diagnosed with Graves’ disease. IHMS advised that he attended regular reviews and his disease is well controlled.</p>
5 May 2014	Disclosed a history of torture and trauma but declined specialist counselling. Mr X advised that he would self-refer to the mental health team if needed.
June 2015	Mr X attended a mental health review and advised he had difficulty sleeping. He stated that he managed his stress with exercise and an established routine. He was prescribed with medication to assist with sleep.
July 2015 – ongoing	Tests indicated that his Graves’ disease was in remission and treatment was ceased. IHMS advised that Mr X’s thyroid function is monitored at regular intervals.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 18 May 2016 Mr X advised he had previously suffered from a thyroid condition but had received treatment and his condition was now resolved. He said it is very hard not to be stressed mentally in detention and he feels like he is just killing time day by day.

Mr X advised that prior to being detained he had lived in the community in Sydney for a long time and has many friends there. He said if he has to be detained while his immigration case is finalised he would like to be detained in Sydney so that his friends could visit him.

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 judicial review.

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.

The Ombudsman recommends that consideration be given to transferring Mr X to Villawood IDC to be closer to his support network while he awaits resolution of his immigration status.