

## REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O report on Mr X who has remained in immigration detention for a cumulative period of more than 36 months (three years).

The first report 1001656 was tabled in Parliament on 1 October 2014. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1995
<b>Ombudsman ID</b>	1002128
<b>Date of DIBP's reports</b>	19 December 2014 and 12 November 2015 <sup>1</sup>
<b>Total days in detention</b>	1,094 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1001656), Mr X remained in community detention.	
9 April 2015	Granted a Bridging visa with an associated Temporary Humanitarian Stay (THS) visa and released from detention.
2 September 2015	Mr X was arrested in the community following a criminal offence. On the same day he was re-detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Villawood Immigration Detention Centre.

### Recent visa applications/case progression

30 May 2014	Mr X's request for judicial review by the Federal Circuit Court (FCC) was adjourned with judgment reserved.
16 July 2014	Mr X was issued with a letter inviting him to comment on the unintentional release of personal information through the Department of Immigration and Border Protection's (DIBP) website. <sup>2</sup>
30 July 2014	Mr X provided his response and DIBP advised that it was assessing whether he had raised further protection related claims as a result of the privacy breach.
7 April 2015	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a Bridging visa.
9 April 2015	Granted a Bridging visa with an associated THS visa.

<sup>1</sup> Following DIBP's 24 month review, Mr X was released from detention. DIBP's 30 month review was received after Mr X was re-detained for a further cumulative period totalling six months.

<sup>2</sup> 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.

19 June 2015	The FCC upheld the RRT's decision to refuse Mr X's Protection visa application.
9 July 2015	Mr X's Bridging visa expired and he remained in the community as an unlawful non-citizen.
13 July 2015	Appealed to the Full Federal Court (FFC). On the same day, DIBP notified Mr X 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.
10 August 2015	DIBP requested further information in relation to the ITOA.
2 September 2015	Mr X was arrested while living in the community as an unlawful non-citizen and re-detained.
12 November 2015	DIBP advised that Mr X's case is affected by the judgment handed down by the FFC <sup>3</sup> which found that the ITOA process was procedurally unfair. DIBP further advised that it is currently reviewing how this judgment will affect protection obligation processes.

#### **Criminal matters**

2 September 2015	Mr X was charged with common assault.
13 October 2015	He appeared in G Local Court where his common assault charge was dropped and changed to assault with act of indecency. Mr X received a 10-month good behaviour bond.

#### **Health and welfare**

International Health and Medical Services advised that Mr X did not require treatment for any major physical or mental health issues since its previous report to the Ombudsman.

#### **Other matters**

DIBP confirmed that since Mr X arrived in Australia before 13 August 2012, he was part of a cohort which, upon expiry of their Bridging visas, required being administratively detained at a DIBP office before the Minister could consider granting a further Bridging visa.

Mr X was arrested and re-detained before this was able to occur.

<sup>3</sup> SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

### **Ombudsman assessment**

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. DIBP has advised that it is reviewing how this judgment will affect protection obligation processes.

The Ombudsman notes with concern that Mr X was living in the community as an unlawful non-citizen for a period of almost two months, during which time DIBP was liaising with him, before he was charged with assault and re-detained. The Ombudsman makes no recommendations in this report.