

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	1956
Ombudsman ID	1003053
Date of DIBP's reports	20 July 2015 and 18 January 2016
Total days in detention	914 (at date of DIBP's latest report)

Detention history

17 July 2013	Mr X was detained under s 189 of the <i>Migration Act 1958</i> after his Business Visitor visa was cancelled upon arrival in Australia and he was refused immigration clearance. He was transferred to Villawood Immigration Detention Centre (IDC).
6 April 2014	Transferred to Yongah Hill IDC.
31 July 2015	Transferred to Wickham Point Alternative Place of Detention APOD. ¹

Visa applications/case progression

16 July 2013	Mr X arrived in Australia as the holder of a Business Visitor visa valid until 5 August 2013.
17 July 2013	Mr X's visa was cancelled under s 116(1)(g) as it was determined he was not visiting Australia for business purposes. He was refused immigration clearance under s 172(3) and detained under s 189.
2 August 2013	Lodged a Protection visa application.
6 August 2013	Bridging visa application associated with the Protection visa application was deemed invalid.
11 December 2013	Protection visa application refused.
13 December 2013	Appealed to the Refugee Review Tribunal (RRT).

¹ DIBP's Australian Immigration Detention Network and Infrastructure report (September 2015) states that Wickham Point is a designated APOD comprising three compounds. One of these compounds is used to house single adult males and is considered a higher security compound than the compounds used to house families and children. Mr X is accommodated in the single adult male compound at Wickham Point APOD.

31 January 2014	The Department of Immigration and Border Protection (DIBP) notified Mr X of a privacy breach caused by the unintentional release of personal information on its website. ²
31 March 2014	RRT affirmed original decision on Mr X's Protection visa application.
2 April 2014	DIBP decided not to refer Mr X to the former Minister for consideration under s 417.
15 July 2014	Mr X was issued with a letter inviting him to comment on the privacy breach. He provided a response on 29 July 2014.
14 January 2015	Mr X was issued 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.
21 January 2015	Mr X provided further information to DIBP in relation to the ITOA.
11 March 2015	DIBP invited Mr X to comment on country information and other information relevant to the ITOA.
18 January 2016	DIBP advised that Mr X's case is affected by the Full Federal Court's (FFC) judgment of 2 September 2015 ³ which found that the ITOA process was procedurally unfair. DIBP further advised that it is in the process of seeking legal advice in relation to the judgment.

Health and welfare

17 July 2013 – 8 December 2015	International Health and Medical Services (IHMS) reported that Mr X advised he had been diagnosed with hepatitis C, hypertension and type 2 diabetes prior to his arrival in Australia. Mr X was monitored by the IHMS general practitioner (GP) in conjunction with regular reviews with specialists. He was also prescribed with medication.
July 2013	Mr X was referred to an infectious disease specialist for management of his liver condition and hepatitis C. He was further referred to a gastroenterologist for investigation of liver damage.
23 September 2013 – 23 February 2015	Attended six specialist appointments for diabetic eye reviews.
15 November 2013	Attended a specialist consultation and underwent a gastroscopy.
December 2013	Liver damage was confirmed with low grade varices.
5 February 2014	Attended an endocrinologist consultation.
30 May 2014	Attended a podiatrist appointment for diabetic foot review.

² 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.

³ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

11 July 2014	A DIBP Incident Report recorded that Mr X wrote on a request form that he would kill himself if the request he had made was not granted. No further information was provided.
1 October 2014	A DIBP Incident Report recorded that Mr X had complained of dizziness and was taken to the medical centre. No further information was provided.
16 December 2014	Attended a podiatrist appointment for diabetic foot review.
27 January 2015	Attended consultations at a diabetes clinic and with an endocrinologist.
23 February 2015	An ophthalmologist noted that Mr X had diabetic retinopathy but no retinopathy threatening his vision. Annual review was recommended.
15 October 2015	Mr X was referred to a liver clinic for further review by a specialist and has remained on a waiting list since 19 November 2015.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He has remained in restricted detention for over two and a half years.

DIBP has advised that Mr X is awaiting the outcome of an ITOA. However, his case is affected by the FFC's judgment of 3 September 2015 which found that the ITOA process undertaken by DIBP was procedurally unfair.

The Ombudsman notes that Mr X is 59 years old and has significant health issues which require ongoing management by healthcare professionals. The Ombudsman further notes the Government's duty of care to detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose.

Given Mr X's age and dependence on healthcare, the Ombudsman recommends that he be considered for a less restrictive placement or a transfer to community detention while his immigration case is progressed.