

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

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Mr X who has remained in immigration detention for more than 84 months (seven years).

The first report 1123/12 was tabled in Parliament on 26 June 2013, the second report 1001160 was tabled in Parliament on 18 March 2015 and the third report 1002223 was tabled in Parliament on 14 September 2016. This report updates the material in those reports and should be read in conjunction with the previous reports.

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1992 |
| Ombudsman ID | 1000153-O |
| Date of DIBP's reports | 2 August 2016 and 31 January 2017 |
| Total days in detention | 2550 (at date of DIBP's latest report) |

Recent detention history

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| Since the Ombudsman's previous report (1002223), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC). |
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Recent visa applications/case progression

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| 13 April 2016 | The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application. |
| 21 April 2016 | Mr X was invited to lodge a temporary visa application. |
| 27 July 2016 | The Minister appealed the Full Federal Court decision and the High Court (HC) found that the International Treaties Obligations Assessment process was not procedurally unfair. ¹ The Department of Immigration and Border Protection (the department) advised that it is considering the implications of this judgment. |
| 2 August 2016 | The department advised that it was considering Mr X's case against the guidelines under s 195A for the grant of a Bridging visa. |
| 26 October 2016 | Lodged a Temporary Protection visa (TPV) application. |
| 12 December 2016 | Mr X's case was referred on a second stage ministerial submission for consideration under s 195A for the grant of a Bridging visa. |
| 18 January 2017 | Mr X was notified that he is eligible to receive the Primary Application Information Service (PAIS) to assist him with lodging a new temporary visa application or providing supporting information for his existing application. He accepted the offer on the same day. The department advised that it was yet to allocate a PAIS provider. |

¹ *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has been diagnosed with depression related to his prolonged detention and situational stress. He is monitored by the IHMS mental health team and attended routine mental health reviews but declined a prescription for antidepressant medication.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 23 May 2017 Mr X advised that he lodged a new visa application in December 2016 and was awaiting the Minister's response.

Mr X reported that he previously resided in the community for two years but was returned to restricted detention following assault charges. He advised that he was subsequently found not guilty of these charges and does not understand why he has not been released from restricted detention.

Mr X advised that he has remained in detention for seven years altogether and is worried about why he has not been released. He said he finds it difficult to sleep, but no longer takes sleeping medication and declined IHMS counselling as he does not find it helpful. He also advised that he stopped attending English classes after his father passed away as he struggled to engage.

Mr X advised that he regularly contacts his family in Country A and used to contact friends in the Australian community.

Ombudsman assessment/recommendation

Mr X was detained on 7 February 2010 after arriving in Australia by sea and has been held in detention for more than seven years.

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. His case is affected by the HC judgment of 27 July 2016 and the department advised that it is considering the implications of this judgment.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa. On 26 October 2016 Mr X lodged an application for a TPV and on 18 January 2017 he was assigned a PAIS provider to assist him with lodging a new temporary visa application or providing supporting information for his existing application.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental and physical health prolonged restricted immigration may pose. The Ombudsman further notes with concern the significant length of time that Mr X has remained in restricted detention and the reported adverse impact on his mental health.

In light of these concerns, the Ombudsman recommends that Mr X's case be referred to the Minister under s 195A for the grant of a Bridging visa.