

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

*Under s 486O of the Migration Act 1958*

This is the fifth s 486O report on Mr X who has remained in restricted immigration detention for more than 78 months (six and a half years). The previous reports are:

812/12 tabled in Parliament on 22 August 2012  
1000880 tabled in Parliament on 19 March 2014  
1001845 tabled in Parliament on 18 March 2015  
1002309 tabled in Parliament on 6 May 2016.

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
<b>Year of birth</b>	1986
<b>Ombudsman ID</b>	1000023-O
<b>Date of DIBP's reports</b>	8 March 2016 and 2 September 2016
<b>Total days in detention</b>	2368 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002309), Mr X has remained at Villawood Immigration Detention Centre.

### Recent visa applications/case progression

10 November 2015	The hearing of Mr X's application for judicial review of the negative International Treaties Obligations Assessment (ITOA) decision before the Federal Circuit Court (FCC) was vacated and re-listed for hearing on 17 March 2016.
8 March 2016	The Department of Immigration and Border Protection (DIBP) advised that Mr X's case was 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.
12 May 2016	The Minister declined to consider intervening under s 195A of the <i>Migration Act 1958</i> to grant Mr X a Bridging visa.
20 June 2016	Lodged an application for a Bridging visa which was found to be invalid.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. <sup>2</sup> DIBP advised that it is considering the implications of this judgment.

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

<sup>2</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

12 August 2016

The FCC adjourned Mr X's application for judicial review pending a hearing scheduled for 14 September 2016.

### **Health and welfare**

International Health and Medical Services advised that Mr X continued to receive counselling and prescribed medication for depression and insomnia. Mr X attended regular torture and trauma counselling sessions and his specialist counsellor noted that his mental health would improve greatly if he were released into the community into the care of his Australian wife.

### **Ombudsman assessment/recommendation**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. At the time of DIBP's latest review he was awaiting the outcome of judicial review.

The Ombudsman notes that Mr X has been held in restricted immigration detention for six and a half years. The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged indefinite restrictive immigration detention may pose. The Ombudsman notes the advice from IHMS that Mr X has ongoing mental health concerns.

In light of these factors, the Ombudsman recommends that consideration be given to granting Mr X a Bridging visa or a community detention placement while he awaits resolution of his immigration case.