

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 54 months (four and a half years).

The first report 1001270 was tabled in Parliament on 28 May 2014, the second report 1001507 was tabled in Parliament on 24 September 2014 and the third report 1001948 was tabled in Parliament on 9 September 2015. This report updates the material in those reports and should be read in conjunction with the previous reports.

Name	Mr X
Citizenship	Country A
Year of birth	1966
Ombudsman ID	1003522
Date of DIBP's reports	22 October 2015 and 21 April 2016
Total days in detention	1642 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001948), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

26 August 2015	Found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> .
22 October 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.
13 April 2016	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
21 April 2016	DIBP advised that Mr X has not yet been invited to apply for a temporary visa.
27 July 2016	The HC found that the ITOA process was not procedurally unfair.

¹ SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to be supported and treated for mental health issues relating to unresolved grief about his son's death, associated insomnia and a history of torture and trauma.

On 31 August 2015 Mr X's specialist counsellor advised that Mr X was highly traumatised by the loss of his son, experiences intense grief and despair and presents with a high level of anxiety and symptoms related to complex trauma. The counsellor further advised that ongoing detention is exacerbating his existing trauma symptoms and contributing to his severe psychological distress.

IHMS advised that since September 2015 he had declined support from the mental health team (MHT) but is aware of self-referral and has accepted a referral to resume specialist counselling.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 1 September 2015 Mr X advised that he has many problems which have affected his mental health, his memory and his sleep. He sees a specialist counsellor every week and he is appreciative of the counsellor's help but no longer sees the IHMS MHT as he was not finding this was helping him.

Mr X expressed concerns with information provided by DIBP included in the Ombudsman's previous reports which he claimed was incorrect. These included details about breaching his community detention conditions in January 2014 and being found in possession of a knife when he was transferred to Yongah Hill IDC in April 2014.

Ombudsman assessment/recommendation

Mr X was detained on 23 October 2011 after arriving in Australia aboard Suspected Illegal Entry Vessel *Nicklin* and has been held in immigration detention for more than four and a half years. He has been found not to be owed protection under the Refugee Convention and complementary protection criterion. He is awaiting the outcome of judicial review.

On 13 April 2016 the Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application. Mr X is awaiting an invitation to apply for a temporary visa.

The Ombudsman 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. The Ombudsman notes with concern that IHMS has advised that Mr X continues to experience mental health issues related to unresolved grief and the specialist counsellor has reported that ongoing detention has exacerbated Mr X's trauma symptoms.

To mitigate further deterioration of Mr X's health issues the Ombudsman recommends that Mr X be considered for a Bridging visa or a transfer to community detention while he awaits resolution of his immigration status.