

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:

1000132 tabled in Parliament on 19 September 2012

1001100 tabled in Parliament on 11 December 2013

1001433 tabled in Parliament on 22 October 2014

1002219 tabled in Parliament on 24 February 2016

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	1992
Ombudsman ID	1000109-O
Date of DIBP's reports	27 January 2016 and 25 July 2016
Total days in detention	2370 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002219), Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
15 August 2015	Transferred to Maribyrnong IDC.
15 October 2015	Transferred to Christmas Island IDC.
5 November 2015	Transferred to Yongah Hill IDC.

Recent visa applications/case progression

18 November 2015	The Department of Immigration and Border Protection (DIBP) was unable to confirm Mr X's identity.
8 January 2016	Referred to the Minister for his consideration under s 417 of the <i>Migration Act 1958</i> . On 19 January 2016 the Minister declined to intervene.
27 January 2016	DIBP advised that Mr X's case was 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 process was procedurally unfair. DIBP further advised that Mr X had been identified as a person of interest in relation to alleged criminal matters while offshore.

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

16 February 2016	Referred to the Minister for his consideration under ss 195A and 197AB. On 15 March 2016 the Minister declined to intervene.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. ² DIBP advised that it is considering the implications of this judgment.
DIBP advised that its investigation into Mr X's identity and nationality remains ongoing and it is unable to resolve Mr X's immigration status until his identity is established.	

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X was provided with orthotic footwear, physiotherapy and pain-relief medication for his ongoing musculoskeletal and orthotic issues.</p> <p>Mr X had been referred for evaluation by a facial surgeon in relation to his dental issues, but as a result of his transfer between detention centres IHMS advised the appointment was missed and it was unaware if a substitute appointment had been booked. Mr X was subsequently reviewed by a dentist in March 2016.</p> <p>IHMS further advised that Mr X continues to present with the symptoms of an adjustment order, including anxiety, depression and sleep disturbance. He was prescribed with medication and referred for specialist counselling. In May 2016 Mr X's psychiatrist noted that his prolonged detention, particularly his current placement, is continuing to have a detrimental effect on his mental health and recommended he be transferred to a detention centre in Sydney to be closer to his wife or alternatively to a detention centre in Melbourne.</p>	
25 April 2016	A DIBP Incident Report recorded that Mr X threatened self-harm.
8 July 2016	A DIBP Incident Report recorded Mr X refused food and fluid.

Other matters

13 November 2015	Mr X lodged a complaint with the Ombudsman's office about his placement at Christmas Island IDC. The complaint was investigated and ultimately finalised on 2 March 2016.
21 December 2015	DIBP advised it had received a complaint from the Australian Human Rights Commission (AHRC) on behalf of Mr X. DIBP provided a response to the AHRC on 27 April 2016.
DIBP advised that in January 2014, Mr X married Ms Y, an Australian citizen. DIBP further advised that their marriage has not been registered under Australian law as Mr X has no identity documents.	

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

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criteria and has been held in restricted detention for more than six and a half years. His case was affected by the HC judgment of 27 July 2016 and DIBP advised that it is considering the implications of this judgment.

In July 2016 DIBP advised that it could not resolve Mr X's immigration status without establishing his identity and nationality. The Ombudsman notes that without resolution of these barriers it is likely that Mr X's detention will remain protracted.

The Ombudsman remains seriously concerned about the risk that an indeterminate period of detention poses to Mr X's mental and physical health. The Ombudsman notes the advice from IHMS that Mr X's prolonged detention, particularly his current placement, is having a detrimental effect on his mental health. The Ombudsman notes the recommendation by Mr X's psychiatrist that he be transferred to a detention centre in Sydney to be closer to his wife or alternatively to Melbourne.

The Ombudsman recommends that Mr X be considered for transfer to a detention centre in Sydney or, should that not be possible, to a detention centre in Melbourne.