

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

*Under s 486O of the Migration Act 1958*

This is the third s 486O report on Mr X who has remained in immigration detention for a cumulative period of more than 48 months (four years).

The first report 1000979 was tabled in Parliament on 12 February 2014 and the second report 1001477 was tabled in Parliament on 18 March 2015. 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>	1993
<b>Ombudsman ID</b>	1002368-O
<b>Date of DIBP's reports</b>	22 April 2016 and 21 October 2016
<b>Total days in detention</b>	1458 (at date of DIBP's latest report)

### Recent detention history

19 June 2014	Absconded from community detention.
29 January 2016	Mr X voluntarily approached the Department of Immigration and Border Protection (DIBP) and was detained under s 189(1) of the <i>Migration Act 1958</i> . On the same day he was transferred to Adelaide Immigration Transit Accommodation (ITA).

### Recent visa applications/case progression

19 June 2014	Life Without Barriers (LWB) reported to DIBP that Mr X was absent from his community detention residence. LWB and DIBP had no further contact with Mr X until he voluntarily approached DIBP.
17 February 2015	DIBP finalised an International Treaties Obligations Assessment (ITOA) following the Full Federal Court's (FFC) decision of 20 March 2013 <sup>1</sup> and the unintentional release of personal information. <sup>2</sup> DIBP determined that the circumstances of Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
30 April 2015	The Minister revoked Mr X's community detention placement under s 197AD.

<sup>1</sup> *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33.

<sup>2</sup> 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.

22 April 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) <sup>3</sup> which found that the ITOA process was procedurally unfair. The Minister appealed the FFC decision.
27 July 2016	The High Court (HC) found that the ITOA process was not procedurally unfair. <sup>4</sup> DIBP advised it is considering the implications of this judgment.
9 September 2016	Mr X's case was referred on a ministerial submission for consideration of lifting the bar under s 46A. On 21 October 2016 DIBP advised that the matter remains ongoing.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X's ability to maintain a positive mental outlook had diminished as a result of his not being able to participate in excursions due to security concerns. It stated he felt hopeless, had been depressed at times and had not been sleeping well. As a result it had recommended that Mr X be allowed to participate in excursions as they would improve his mood and overall mental health. IHMS stated that Mr X regularly attended mental health screenings and consultations.

IHMS further advised that on 4 July 2016 an optometrist had found that Mr X had decreased vision in one eye with vitreous strands, an epiretinal membrane, microaneurysms and dot haemorrhages. He was referred for review by a specialist and an appointment was booked for 21 September 2016

### Other matters

The Ombudsman's first and second reports on Mr X also included his sister, Ms Y. She absconded from community detention at the same time as Mr X. On 21 October 2016 DIBP advised that her whereabouts remained unknown.

18 January 2016	Mr X married Ms Z who is the subject of Ombudsman report 1002339.
8 February 2016	Ms Z gave birth to a daughter <sup>5</sup> in Australia. The birth certificate lists Mr X as the father. Ms Z and daughter reside in community detention in South Australia.

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

<sup>4</sup> *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

<sup>5</sup> Miss P has been in detention for less than two years and is not subject to reporting under s 486N.

### **Information provided by Mr X**

During an interview with Ombudsman staff at Adelaide ITA on 1 June 2016 Mr X advised he had absconded from community detention since he believed his immigration case was close to being finally determined and he was afraid of being returned to Country A. He subsequently realised that absconding was a mistake and voluntarily contacted his case manager to arrange to return to detention.

Mr X advised he had family in Country A but rarely spoke with them. He referred to his marriage to Ms Z and their child. He advised that Ms Z arrived on the same boat as him and was a carer both for their child and her younger sister who was 14. He said Ms Z lived near Adelaide ITA and visited daily. Additionally he had friends who visited every month. He said he also had a sister living in Victoria.

Mr X said he was able to cope with detention as he was used to it. He kept himself busy with exercises and classes. One concern was a problem with his left eye. He stated he was facing difficulties in seeing a specialist. He also advised that he would like to be in community detention with his wife to help bring up their child as it was difficult for her to look after both their child and her younger sister on her own.

### **Case status**

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 DIBP advised that it is considering the implications of this judgment.

DIBP further advised that Mr X has been referred on a ministerial submission for consideration of lifting the bar under s 46A and the matter remains ongoing.