

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 42 months (three and a half years).

The first report 1002315 was tabled in Parliament on 3 February 2016. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A (born in Country B)
Year of birth	1990
Ombudsman ID	1001264-O
Date of DIBP's reports	9 March 2016 and 7 September 2016
Total days in detention	1276 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002315), Mr X has remained at Facility C.

Recent visa applications/case progression

24 September 2015	Found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> . Mr X was notified of this decision on 30 September 2015.
9 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) ¹ which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair. The Minister appealed the FFC decision.
27 July 2016	The High Court (HC) found the ITOA process was not procedurally unfair. ²
1 September 2016	Mr X filed a notice of discontinuance in the HC in relation to his application for review of the negative ITOA decision.
7 September 2016	DIBP advised that processing of Mr X's Partner visa application lodged on 14 April 2015 remained ongoing and that it was also considering the resolution of his immigration status.

Other legal matters

9 August 2015	Attended Parramatta Local Court to face a charge under s 197A of escaping from immigration detention on 26 January 2014. His next court appearance was scheduled for 13 September 2016.
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¹ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

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

Health and welfare

International Health and Medical Services advised that Mr X has not required treatment for any major physical or mental health issues since the Ombudsman's previous report.	
10 August 2016	DIBP Incident Reports recorded that Mr X was the victim of an alleged assault and that he self-harmed by consuming a piece of plastic.
13 August 2016	A DIBP Incident Report recorded that Mr X had stated he was pursuing food and fluid refusal.

Recent detention incidents

DIBP Incident Reports recorded that Mr X was allegedly involved in a number of behavioural incidents of a minor nature.	
10 – 11 August 2016	DIBP Incident Reports recorded that Mr X was involved in demonstrations.

Other matters

29 June 2016	The Australian Human Rights Commission (AHRC) notified DIBP of a complaint by Mr X and enquired whether DIBP would consider attempting resolution through conciliation. On 19 July 2016 DIBP informed the AHRC that it was not in a position to participate in conciliation. On 4 August 2016 the AHRC requested a written response in relation to the complaint.
22 August 2016	Mr X lodged a complaint with the Ombudsman's office about the conditions of his detention. This was after he was placed in an observation room for his own safety pursuant to a court order. DIBP were notified of the complaint on 18 October 2016 and the investigation remains ongoing.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 21 November 2016 Mr X indicated that he was still not able to see his wife, either through visits from her or through escorted home visits. He raised the negative impact of this situation on their young child which meant both parents could not be together with their child who is an Australian citizen.
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Ombudsman assessment and recommendation

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 the processing of Mr X's Partner visa application remains ongoing.

The Ombudsman's previous report 1002315 recommended, since Mr X's wife was no longer employed with P, in the interests of their child and family cohesion, that his wife and child be allowed to visit him at Facility C. If this was not possible due to the conditions under which Mr X's wife lost her job, the report alternatively recommended escorted home visits.

In his statement to Parliament on 19 January 2016, the Minister noted the Ombudsman's recommendation and advised that Mr X's son was allowed to have regular visitation access. No advice was provided regarding Mr X's wife and the Ombudsman notes that Mr X indicated to Ombudsman staff on 21 November 2016 that he was still unable to see his wife.

The Ombudsman again recommends that either Mr X's wife and child be allowed to visit him at Facility C or that escorted home visits take place, unless cogent and compelling reasons preclude either of these arrangements.

The Ombudsman further recommends that processing of Mr X's Partner visa application be expedited if the matter has not already been finalised.