

## 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 60 months (five and a half years). The previous reports are:

1001111 tabled in Parliament on 11 December 2013  
1001406 tabled in Parliament on 27 August 2014  
1001689 tabled in Parliament on 4 March 2015  
1002173 tabled in Parliament on 2 March 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>	1971
<b>Ombudsman ID</b>	1000857-O
<b>Date of DIBP's reports</b>	4 January 2016 and 6 July 2016
<b>Total days in detention</b>	1825 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002173), Mr X has remained at Yongah Hill Immigration Detention Centre.

### Recent visa applications/case progression

26 October 2015	Found to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for consideration of the grant of a Bridging visa.
4 January 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 International Treaties Obligations Assessment (ITOA) process was procedurally unfair.
6 July 2016	DIBP advised that it was preparing to refer Mr X on a ministerial submission under s 195A.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) 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.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was reviewed by a psychiatrist and diagnosed with a significant cognitive impairment. The psychiatrist advised that Mr X experiences memory issues and recommended that these concerns be considered in the determination of his immigration status.

In February 2016 the IHMS psychologist assessed Mr X and advised that his cognitive impairment was related to a previous injury. However, he was reported as having adequate coping skills and appeared self-directed. The psychologist recommended that he attend regular mental health reviews.

IHMS further advised that Mr X had previously been diagnosed with hepatitis B, hepatitis C and hepatitis D but has declined all pathology testing to monitor his condition. He continues to be followed up by IHMS.

## Ombudsman assessment/recommendation

The Ombudsman notes that Mr X was detained on 8 July 2011 and has remained in restricted immigration detention for over five and a half years.

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.

The Ombudsman further notes DIBP's advice that it was preparing to refer Mr X on a ministerial submission under s 195A for the grant of a Bridging visa.

The Ombudsman notes with concern advice from IHMS that Mr X has been diagnosed with a significant cognitive impairment and requires ongoing mental health support. The Ombudsman further notes the Government's duty of care to detainees and the serious risk to mental and physical health prolonged detention may pose.

In light of Mr X's condition, the Ombudsman recommends that DIBP expedite the preparation of the ministerial submission under s 195A.