

## 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:

Report 855/12 was tabled in Parliament on 28 November 2012

Report 1000927 was tabled in Parliament on 28 May 2014

Report 1001639 was tabled in Parliament on 4 March 2015

Report 1002118 was tabled in Parliament on 14 October 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>	1972
<b>Ombudsman ID</b>	1000051-O
<b>Date of DIBP's reports</b>	17 December 2015 and 16 June 2016
<b>Total days in detention</b>	2368 (at date of DIBP's report)

### Recent detention history

Since the Ombudsman's previous report (1002118), Mr X remained at Christmas Island Immigration Detention Centre (IDC).	
29 August 2015	Transferred to Villawood IDC.

### Recent visa applications/case progression

21 July 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X signed a request for voluntary removal to Country A, but then decided to seek judicial review of the International Treaties Obligation Assessment (ITOA) related to the privacy breach. <sup>1</sup>
28 August 2015	Requested judicial review by the Federal Circuit Court.

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<sup>1</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.

17 December 2015	DIBP advised that Mr X's case has previously met the guidelines for referral to the Minister under ss 195A and 197AB of the <i>Migration Act 1958</i> and this matter remains ongoing. The referral was initiated on 17 February 2014.  DIBP further advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>2</sup> which found that the ITOA process was procedurally unfair.
23 February 2016	Mr X withdrew his request for removal from Australia.
21 March 2016	The Minister filed an application in the High Court (HC) for special leave to appeal the FFC's decision.
7 June 2016	The HC heard the Minister's appeals from the FFC decision. Judgment was reserved.
16 June 2016	DIBP advised that it is considering the resolution of Mr X's immigration status.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to be treated and monitored for previously reported ongoing physical and mental health issues and will require further treatment.	
14 September 2015	The psychiatrist noted that Mr X's mental health problems would deteriorate if he was returned to Christmas Island IDC and recommended that Mr X remain at Villawood IDC while his immigration case is progressed. The psychiatrist also assessed that Mr X's depression and anxiety is situational and prescribed him with medication.
2 November 2015	Referred to an ear, nose and throat specialist due to ongoing nasal symptoms. An appointment was scheduled for 10 December 2015.
18 November 2015	Mr X underwent an investigative procedure following deterioration of his gastrointestinal conditions. An abnormality was identified and he was scheduled to see a surgeon on 30 November 2015.
23 November 2015	IHMS reiterated that Mr X's psychiatrist has previously recommended a community placement and that Mr X's mental health issues are related to his ongoing detention.

<sup>2</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

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

During telephone conversations with Ombudsman staff on 15 September 2015 and 4 May 2016 Mr X raised concerns about his ongoing health issues and his immigration pathway.

Mr X expressed frustration about the length of time it takes for him to be seen by IHMS staff and anxiety about his deteriorating physical health. He said he is worried that despite receiving medical treatment from specialists his condition is not improving and feels that the time spent in Christmas Island IDC was a setback to his health.

He also stated that it was very embarrassing for him to have to manage the symptoms of his health condition while sharing accommodation with other people.

Mr X said about two months ago his case manager had told him that he had to consider returning to Country A as it was unlikely he will get a visa to stay in Australia. Mr X said he advised his case manager that he cannot return to Country A and the reason he has been in detention for more than six years is because he cannot return. Mr X stated that he cannot understand why he is still in detention.

He advised that he has requested judicial review but because he cannot read he does not know what is going on with his case and relies on other detainees to explain legal and other processes to him.

### **Ombudsman assessment/recommendation**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. He is awaiting the outcome of judicial review.

Mr X's case is also affected by the FFC's judgment of 2 September 2015, which found that the ITOA process undertaken by DIBP was procedurally unfair. On 7 June 2016 the HC heard the Minister's appeals from the FFC decision and judgment was reserved.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite restrictive immigration detention may pose. In the case of Mr X, the Ombudsman notes that he has been in detention for more than six and a half years and during this time has continued to experience mental health problems which the psychiatrist attributes to his prolonged detention. The Ombudsman further notes that Mr X also has significant and ongoing physical health concerns.

The Ombudsman's previous report (1002118) tabled in Parliament on 14 October 2014 recommended the ministerial intervention referral under ss 195A and 197AB be expedited.

The Minister noted the Ombudsman's recommendation and advised that DIBP was preparing a submission for his consideration under s 197AB. On 17 December 2015 DIBP advised that this matter remained ongoing.

The Ombudsman remains seriously concerned about Mr X's ongoing mental health issues and again recommends that progression of the submission for the Minister to consider a community detention placement for Mr X be expedited.