

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 restricted immigration detention for more than 48 months (four years).

The first report 1001452 was tabled in Parliament on 25 June 2014 and the second report 1001799 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.

Name	Mr X
Citizenship	Country A
Year of birth	1974
Ombudsman ID	1002252
Date of DIBP's reports	17 February 2015, 18 August 2015 and 17 February 2016
Total days in detention	1460 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1001799), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

12 January 2015	The Department of Immigration and Border Protection (DIBP) advised it had commenced a reassessment of Mr X's protection claims under an International Treaties Obligation Assessment (ITOA). DIBP further advised that it was also assessing whether Mr X had raised further protection related claims as a result of the privacy breach. ¹
27 January 2015	Mr X provided further information for consideration in relation to the ITOA.
17 February 2015	DIBP advised that Mr X's request for ministerial intervention under s 417 of the <i>Migration Act 1958</i> , lodged on 7 May 2014, was put on hold pending the outcome of the ITOA.
16 June 2015	The ITOA found that Mr X's case does not engage Australia's <i>non-refoulement</i> obligations.
14 August 2015	The Minister declined to intervene under s 417. DIBP advised that it had sought to initiate a request to the Minister to consider exercising his power under s 48B however Mr X's case did not meet the guidelines for referral.

¹ 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.

18 August 2015	DIBP advised that Mr X's case was being assessed under s 195A for a possible referral to the Minister for his consideration to grant a visa.
15 January 2016	Found to meet the guidelines for referral to the Minister under s 195A for consideration to grant a Bridging visa.
17 February 2016	DIBP advised that Mr X is on a removal pathway. However, his case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ² which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.

Health and welfare

<p>International Health and Medical Services (IHMS) reported that Mr X continued to be monitored by the general practitioner and received specialist treatment for ongoing physical health issues including hepatitis C, hypothyroidism, chronic headaches and recurrent nausea and vomiting.</p> <p>IHMS advised that Mr X continued to display symptoms of anger and frustration because of his prolonged detention. He had regular contact with the mental health team for monitoring of mental health issues related to a history of torture and trauma and post-traumatic stress disorder. He declined to see a psychiatrist or take antidepressant medication.</p>	
14 October 2014	Mr X was seen by a trauma and general surgeon at the hospital following nausea and vomiting after meals and a 40 kilogram weight loss since his arrival in Australia. IHMS advised that Mr X had sustained an abdominal injury prior to his arrival in Australia but the investigative tests conducted by the specialist did not identify this as a cause for Mr X's symptoms. IHMS reported that he was monitored closely by the GP.
17 June 2015	The psychologist reported that the decline in Mr X's mood was likely to be perpetuated and exacerbated by ongoing detention and lack of information as to the end date of his detention. It was also reported that Mr X was fearful of possible removal from Australia.

Other matters

26 June 2014	The Australian Human Rights Commission (AHRC) sent a conciliation proposal to DIBP, which noted that Mr X would consider his complaint to the AHRC resolved if he was transferred to community detention.
15 September 2014	Mr X withdrew his complaint with the AHRC and the matter was closed.

² SZSSJ v Minister for Immigration and Border Protection [2015] FCAFC 125.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 2 September 2015 Mr X advised that he had met with the DIBP Removals team at the end of August 2015.

Mr X expressed concern that if he was returned to Country A he would not be able to receive treatment for hepatitis C but more importantly he did not feel it was safe for him to return. He explained that his family had been killed by the militia and he had been tortured and still suffered physical effects of a bullet wound.

Mr X said he had been in detention for four years and while the militia had hurt him physically he felt that detention had hurt him mentally, and he suffered from stress and depression.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

DIBP advised that Mr X is on a removal pathway but his 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 21 March 2016 the Minister filed a notice in the HC to appeal the FFC's decision.

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, he has remained in restricted immigration detention for more than four years and the Ombudsman notes with concern that IHMS has reported that Mr X continues to suffer from ongoing physical and mental health issues.

The Ombudsman notes that Mr X's case has been found to meet the guidelines for referral to the Minister under s 195A for consideration to grant a Bridging visa and recommends that this referral be expedited.