

## 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 more than 36 months (three years).

The first report 1002368 was tabled in Parliament on 11 November 2015. This report updates the material in that report and should be read in conjunction with the previous report.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1974
<b>Ombudsman ID</b>	1003449
<b>Date of DIBP's reports</b>	28 September 2015 and 21 March 2016
<b>Total days in detention</b>	1094 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous report (1002368), Mr X has remained at Wickham Point Alternative Place of Detention.

### Recent visa applications/case progression

6 February 2014	Requested judicial review by the Federal Circuit Court (FCC).
11 March 2015	Requested ministerial intervention under s 195A of the <i>Migration Act 1958</i> .
8 May 2015	Found not to meet the guidelines for referral to the Minister under s 195A.
19 June 2015	FCC affirmed original decision.
26 June 2015	Requested judicial review by the Full Federal Court (FFC).
17 August 2015	The Department of Immigration and Border Protection (DIBP) notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engage Australia's <i>non-refoulement</i> obligations.
1 September 2015	DIBP invited Mr X to comment on country and other information in relation to the ITOA, however he did not provide a response.
17 December 2015	FFC affirmed original decision.
21 March 2016	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) <sup>1</sup> which found that the ITOA process was procedurally unfair.  The Minister filed a notice in the High Court (HC) to appeal the FFC's decision.

<sup>1</sup> *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

## Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X is being treated for ongoing physical health issues including hypertension and chronic back and ankle pain reportedly related to his torture and trauma experience.</p>	
<p>23 March 2013 – ongoing</p>	<p>Mr X disclosed a history of torture and trauma and was referred for specialist counselling and ongoing support from the IHMS mental health team.</p> <p>IHMS advised that an IHMS psychiatrist and an external psychologist have treated Mr X for deteriorating mental health issues of severe anxiety and symptoms associated with depression.</p> <p>The psychologist advised IHMS that prolonged detention without adequate support will adversely affect Mr X's mental health. Both the psychologist and psychiatrist have repeatedly recommended that Mr X would benefit from living in the community where he can receive support and assistance from his family.</p>

## Ombudsman assessment/recommendation

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

Mr X's case is 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 health that prolonged restrictive immigration detention may pose. The Ombudsman notes that Mr X has been held in restricted immigration detention for more than three years and notes with concern that IHMS has reported his mental health has deteriorated during this time.

The Ombudsman further notes the advice from IHMS that Mr X's psychiatrist and psychologist recommended that Mr X be transferred to community detention to prevent further deterioration of his mental health.

The Ombudsman recommends that Mr X be considered for a Bridging visa or a transfer to community detention while he awaits resolution of his case.