

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fourth s 486O report on Mr X who has remained in immigration detention for a cumulative period of more than 54 months (four and a half years).

The first report 1281/13 was tabled in Parliament on 26 June 2013, the second report 1001560 was tabled in Parliament on 29 October 2014 and the third report 1002026 was tabled in Parliament on 3 June 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	1993
Ombudsman ID	1002535
Date of DIBP's reports	14 May 2015, 12 November 2015 and 17 May 2016
Total days in detention	1643 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002026), Mr X remained at Maribyrnong Immigration Detention Centre (IDC).	
16 December 2014	Transferred to Yongah Hill IDC.
1 October 2015	Transferred to Christmas Island IDC.

Recent visa applications/case progression

19 November 2014	Found not to meet the guidelines for a referral to the former Minister under ss 195A and 197AB of the <i>Migration Act 1958</i> for the grant of a Bridging visa or community detention placement.
10 April 2015	The Department of Immigration and Border Protection (DIBP) finalised an International Treaties Obligations Assessment (ITOA) for Mr X and found that his case does not engage Australia's <i>non-refoulement</i> obligations.
28 April 2015	Mr X's representative alleged that documentation provided to DIBP on 12 March 2015 had not been considered during the ITOA. On 1 May 2015 DIBP informed Mr X's representative that the documentation had been considered and provided copies of the relevant materials.

4 June 2015	Found not to meet the guidelines for a referral to the Minister under s 46A.
12 November 2015	DIBP advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair.
21 March 2016	The Minister appealed the FFC decision and on 27 July 2016 the High Court found that the ITOA process was not procedurally unfair.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive psychological and psychiatric counselling for management of insomnia, substance abuse, depression and an adjustment disorder. He also disclosed a history of torture and trauma and was placed on Supportive Monitoring and Engagement observations on multiple occasions following incidents of self-harm. He continued to be closely monitored by the mental health team (MHT).

IHMS further advised that he received ongoing treatment for a range of physical health issues, including chronic back pain and asthma.

Other matters

DIBP advised that Mr X's fiancé, Ms Y, currently resides in Australia on a Student visa.

Ombudsman assessment/recommendation

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

The Ombudsman notes that Mr X has remained in immigration detention for a cumulative period of more than four and a half years. The Ombudsman further notes that Mr X has received treatment for a range of mental health issues and is closely monitored by the MHT following a recent history of self-harm.

In light of this advice, the Ombudsman recommends that Mr X be considered for the grant of a Bridging visa while he awaits the resolution of his immigration status. The Ombudsman further recommends that priority is given to resolving his immigration status to allow him to apply for a temporary visa.

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