

**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 a cumulative period of more than 42 months (three and a half years).

The first report 1301/13 was tabled in Parliament on 26 June 2013. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1984
Ombudsman ID	1000373-O
Date of DIBP's reports	6 February 2015 ¹ and 8 June 2016
Total days in detention	1276 (at date of DIBP's latest report)

Recent detention history

25 March 2013	Granted a Bridging visa with associated Temporary Humanitarian Stay (THS) visa and released from detention.
19 November 2015	Re-detained under s 189(1) of the <i>Migration Act 1958</i> and transferred to Facility B.

Recent visa applications/case progression

25 March 2013	Following the intervention of the former Minister under s 195A, Mr X was granted a Bridging visa with associated THS visa and released from immigration detention.
18 July 2013 – 23 June 2015	Granted a further four Bridging visas with the last ceasing on 23 September 2015.
Date not provided	The Department of Immigration and Border Protection (DIBP) determined that Mr X's case was affected by the Full Federal Court's (FFC) decision of 20 March 2013. ²
6 November 2013	DIBP notified Mr X of the commencement of an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of his case engaged Australia's <i>non-refoulement</i> obligations.
26 October 2015	DIBP finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
19 November 2015	Re-detained under s 189(1).

¹ DIBP's 36 month review on Mr X was due in December 2015. DIBP advised that the delay in provision of this review was due to a system failure.

² *Minister for Immigration and Citizenship v SZQRB* [2013] FCAFC 33.

21 December 2015	Requested judicial review of the ITOA by the Federal Circuit Court (FCC).
3 February 2016	FCC set hearing date of 17 October 2016.

Health and welfare

International Health and Medical Services (IHMS) advised that, following his re-detention, Mr X engaged in self-harm, food and fluids refusal and made threats to end his life. As a result he was hospitalised on a number of occasions. He was also referred to a specialist counselling service with appointment pending.

IHMS advised that a hospital psychiatrist was of the opinion that Mr X could have depression and anxiety disorder.

An IHMS psychiatrist diagnosed Mr X with an adjustment disorder. He declined antidepressant therapy.

Other matters

30 June 2016	Ombudsman staff visiting Facility B were approached by Mr X. He stated that he wanted to be provided with some clarity regarding his immigration pathway and was confused about the options available to him now that his family situation had changed in that he now had a baby born onshore to his Australian citizen wife. Mr X was advised that Ombudsman staff could make a request to DIBP for his case manager to talk with him. Mr X then indicated he would speak to his case manager directly and did not want the office to take any further action.
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Information provided by Mr X

During an interview with Ombudsman staff at Facility B on 23 March 2016 Mr X advised that previously he had been living in the community, initially on a bridging visa, for three years. He said he had supported himself from scavenging in bins, sleeping in cars, on the streets and with help from friends. Then, last year, he had lived with his girlfriend who was an Australian citizen.

Mr X advised that, since being re-detained, he had suffered from mental health issues. He referred to self-harm. He said that a month ago he had been on a hunger strike for 12 days and was hospitalised on two occasions. He did not feel that IHMS could help him. He did not sleep well and would often wake up around 2.00–3.00 am from bad dreams about going in and out of detention. He would then be unable to go back to sleep.

Mr said that he found being in detention at Facility B very hard because the majority of detainees were previously in prison. He did not understand why he was being accommodated with people with criminal backgrounds. He said that this situation made him feel very sick. Because detainees were fighting every single day he mostly stayed in his room. He said there was a lot of drug use.

Mr X advised his family in Country A did not know he was in detention. He explained they were in their own bad situation in Country A, having lost everything since he had left. He further advised that his parents were in poor health which worried him.

He said that his Australian citizen partner was due to give birth in four weeks. She had been visiting regularly but currently could not visit as she was in the final stages of pregnancy. He had declined an offer from DIBP to be present at the birth as the thought of seeing the birth of his baby daughter then having to leave his partner and daughter to return to detention would be too difficult to bear. He indicated that he might reconsider closer to the birth.

However, she called him every day. He said she was very worried about how she was going to look after their daughter on her own. She was currently staying with a friend as she was homeless.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. At the time of DIBP's latest review Mr X was awaiting the outcome of judicial review.

The Ombudsman notes that the FCC has listed Mr X's matter for hearing on 17 October 2016.

The Ombudsman further notes Mr X's advice that he has an Australian citizen partner and child.

The Ombudsman recommends that Mr X be considered for a Bridging visa or community detention placement pending final resolution of his case.