

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the sixth 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 864/12 was tabled in Parliament on 28 November 2012
 Report 1001099 was tabled in Parliament on 11 December 2013
 Report 1001451 was tabled in Parliament on 27 August 2014
 Report 1001795 was tabled in Parliament on 3 December 2014
 Report 1002249 was tabled in Parliament on 2 March 2016.

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	1962
Ombudsman ID	1000173-O
Date of DIBP's reports	16 February 2016 and 16 August 2016
Total days in detention	2368 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002249), Mr X remained at Facility B.	
30 August 2015	Transferred to Facility C.
12 – 23 October 2015	Transferred to Facility D and back to Facility C twice. Mr X remains at Facility C.

Recent visa applications/case progression

15 September 2015	The Federal Circuit Court (FFC) dismissed Mr X's application for interlocutory orders including declarations about his place of detention, an injunction preventing his transfer to Facility B and subpoenas requiring the Department of Immigration and Border Protection (the department) to produce documents. Mr X appealed to the Full Federal Court (FFC).
16 September 2015	Mr X was found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> . On the same day he signed a request for removal from Australia.
22 September 2015	Mr X remained subject to a Criminal Justice Stay Certificate (CJSC) but the department refused to grant him a Criminal Justice visa.
1 October 2015	Mr X withdrew his request for removal from Australia.

27 October 2015	Mr X filed an application for an injunction preventing him from being transferred to Facility B. An injunction was granted by the Federal Court the following day.
16 February 2016	The department advised that Mr X's case was affected by the judgment handed down on 2 September 2015 by the FCC ¹ which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair. The FCC adjourned the review of three matters relating to Mr X pending the outcome of any appeal against the FCC's decision.
9 March 2016	After hearing Mr X's appeal against the FCC's dismissal of his interlocutory applications the FCC remitted the matters to the FCC.
26 April 2016	Mr X filed an application requesting the FCC disqualify itself from hearing his matters which had been adjourned pending the outcome of any appeal against the FCC decision. The application was dismissed and these matters were listed for hearing on 19 October 2016.
27 July 2016	The Minister appealed the FCC decision and the High Court (HC) found that the ITOA process was not procedurally unfair. ² The department advised that it is considering the implications of this judgment and the resolution of Mr X's immigration status.
16 August 2016	The department advised that Mr X is still subject to a CJSJ in relation to his role as a witness in criminal proceedings.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to be monitored for his previously diagnosed type 2 diabetes and in March 2016 he was prescribed with medication to manage his blood sugar levels.

In September 2015 Mr X was admitted to hospital after presenting with chest pain, but investigations identified no abnormalities. In October 2015 he presented with further chest pain and was referred to the mental health team (MHT) for possible panic attack symptoms.

IHMS further advised that Mr X received ongoing counselling and support from the MHT to manage his history of torture and trauma, anxiety and adjustment disorder. In December 2015 he was diagnosed with post-traumatic stress disorder and advised to continue with counselling therapy. IHMS advised that Mr X was referred to a specialist trauma counselling service in December 2015 and again in June 2016 but at the time of the most recent IHMS report he was still awaiting an appointment.

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

² *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

Other matters

10 October 2016	<p>Mr X lodged a complaint with the Ombudsman's office about being restrained while travelling to medical and legal appointments and about his requests to be transferred to Facility E to be closer to his support network which were declined.</p> <p>The complaint was investigated and Mr X was advised that the Australian Border Force had adhered to its policies and procedures in making decisions about the use of restraints and his placement at Facility C.</p>
30 November 2016	<p>Mr X lodged a complaint with the Ombudsman's office about items of his personal property that had been temporarily left at Facility B, which Serco advised him were now unable to be located. This matter is currently under investigation by the Ombudsman's office and remained outstanding at the time of this report.</p>

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 the department's latest review he was awaiting the outcome of judicial review. He was also the subject of a CJSC and cannot be removed while this is in place.

Mr X's case is also affected by the HC judgment of 27 July 2016 and the department advised that it is considering the implications of this judgment.

The Ombudsman notes with concern that at the time of IHMS's latest report Mr X had been waiting for an appointment with a specialist counselling service for over 6 months.

The Ombudsman recommends that IHMS follow up this referral as a matter of urgency if Mr X has not been allocated an appointment yet.

The Ombudsman further recommends that if capacity permits, the department give consideration to transferring Mr X back to Facility E to be closer to his support network.