

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 restricted immigration detention for more than 66 months (five and a half years).

The first report 1000881 was tabled in Parliament on 19 March 2014, the second report 1001703 was tabled in Parliament on 18 March 2015 and the third report 1002547 was tabled in Parliament on 3 February 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 (born in Country B) ¹
Year of birth	1966
Ombudsman ID	1000727-O
Date of DIBP's reports	25 November 2015 and 25 May 2016
Total days in detention	2005 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002547), Mr X has remained at Wickham Point Alternative Place of Detention.

Recent visa applications/case progression

24 July 2015	The Department of Immigration and Border Protection (DIBP) finalised an International Treaties Obligations Assessment (ITOA) in relation to the unintentional release of personal information ² , determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
19 August 2015	Requested judicial review by the Federal Circuit Court (FCC) of the ITOA.
12 October 2015	Mr X's case was referred on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for a community detention placement.

¹ Previously DIBP advised that Mr X was a dual national of Country A and Country B.

² 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.

8 December 2015	Mr X's proceedings in the FCC were adjourned pending determination of the Minister's application to the High Court (HC) for special leave to appeal, and any subsequent appeal, from the Full Federal Court's decision of 2 September 2015 ³ which found that the ITOA process was procedurally unfair.
25 May 2016	DIBP advised it was considering the resolution of Mr X's immigration status.
27 July 2016	The HC found that the ITOA process was not procedurally unfair. ⁴

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for conditions including hypertension with kidney impairment, high cholesterol levels, type 2 diabetes, a congenital lower limb condition and cervical spondylosis.

IHMS further advised that in July 2015 Mr X presented with social isolation, low mood, sleeping difficulties, impaired memory and decreased concentration with ruminative thoughts. It was then agreed to restart antidepressant medications.

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 Mr X was being considered for a community detention placement and, given the length of time he has spent in restricted immigration detention, recommends that this matter be expedited if it has not already been finalised.

³ *SZSSJ v Minister for Immigration and Border Protection* [2015] FCAFC 125.

⁴ *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.