

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 36 months (three years).

The first report 1003183 was tabled in Parliament on 15 April 2016. 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	1949
Ombudsman ID	1001939-O
Date of DIBP's reports	3 February 2016 and 3 August 2016
Total days in detention	1094 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1003183), Mr X remained at Wickham Point Alternative Place of Detention (APOD).	
15 May 2016	Transferred to Brisbane Immigration Transit Accommodation (ITA).
28 July 2016	Transferred to Facility B.

Recent visa applications/case progression

19 October 2015	The Department of Immigration and Border Protection (DIBP) advised that Mr X's case is affected by the judgment handed down on 2 September 2015 ¹ by the Full Federal Court (FFC) which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair. The Federal Circuit Court adjourned the review of Mr X's ITOA pending the outcome of any appeal against the FFC's decision.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. ²
13 April 2016	The Minister lifted the bars under ss 46A and 48B of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application.

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.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and supportive counselling for depression related to detention fatigue and situational stress. He was placed on Supportive Monitoring and Engagement observations in April 2016. He continues to be closely monitored by the mental health team and general practitioner (GP).

In May 2016 Mr X underwent a brain scan which confirmed the previous diagnosis of an intracerebral cyst. He was referred to a neurosurgeon for assessment and continues to be monitored by the GP.

IHMS further advised that Mr X receives ongoing treatment for multiple physical health concerns, including hypertension and type 2 diabetes.

16 May 2016 –
20 June 2016

Admitted to a psychiatric hospital for a mental health assessment and treatment. The hospital psychiatrist confirmed that Mr X had depression and an adjustment disorder related to detention fatigue and recommended that he be placed in the community.

Information provided by Mr X

During an interview with Ombudsman staff at Wickham Point APOD on 19 April 2016 Mr X advised that he had serious physical illnesses and was depressed as well. He indicated he was experiencing side effects from a medication he was taking but had been told he still needed to take it.

Ombudsman assessment/recommendation

Mr X was detained on 25 December 2011 after arriving in Australia aboard Suspected Illegal Entry Vessel *Nimrod* and has been held in restricted detention for a cumulative period of over three years.

On 13 April 2016 the Minister lifted the bars under ss 46A and 48B to allow Mr X to lodge a temporary visa application. Mr X is awaiting an invitation to apply for a temporary visa.

The Ombudsman notes with concern the Government's duty of care to detainees and the serious risk to mental health prolonged detention may pose. The Ombudsman further notes advice from a psychiatric hospital psychiatrist that Mr X would benefit from being placed in the community. In light of this advice, the Ombudsman recommends that consideration be given to placing Mr X in community detention while he awaits the resolution of his immigration status.