

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 66 months (five and a half years). The previous assessments are:

1281/13 tabled in Parliament on 26 June 2013

1001560 tabled in Parliament on 29 October 2014

1002026 tabled in Parliament on 3 June 2015

1002535 tabled in Parliament on 8 November 2016.

This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1993
Ombudsman ID	1000677-O
Date of DIBP's reviews	12 November 2016 and 13 May 2017
Total days in detention	2,004 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002535), Mr X remained at Christmas Island Immigration Detention Centre (IDC).	
5 April 2017	Transferred to Yongah Hill IDC.

Recent visa applications/case progression

27 July 2016	The Minister appealed the Full Federal Court decision and the High Court found that the International Treaties Obligations Assessment (ITOA) process was not procedurally unfair. ¹
9 September 2016	Mr X's case was referred on a ministerial submission for consideration to lift the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to apply for a temporary visa.
20 January 2017	Mr X was removed from the s 46A ministerial submission as the Department of Immigration and Border Protection (the department) decided to rely on the decision made in Mr X's ITOA.
12 May 2017	The Minister declined to consider Mr X's case under s 195A for the grant of a bridging visa.
15 May 2017	The department advised that as Mr X has no matters before the department, the courts or tribunals, he has been referred for removal action.

¹ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Health and welfare

International Health and Medical Services advised that Mr X presented with sleeping difficulties in January 2017, but did not accept an appointment for support.

Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in detention for a cumulative period of more than five and a half years. He has no matters before the department, the courts or tribunals and has been referred for removal action.

The Ombudsman's previous assessment (1002535) recommended that Mr X be considered for the grant of a bridging visa while he awaits the resolution of his immigration status and that priority be given to resolving his immigration status to allow him to apply for a temporary visa.

On 8 November 2016 the Minister advised that the department would review Mr X's case for a possible referral for consideration under s 195A and that the department had referred Mr X's case for consideration under s 46A.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. The Ombudsman further notes with concern that Mr X's removal is likely to be protracted as involuntary removal to Country A is not possible at present.

In light of these concerns and the significant length of time Mr X has remained in detention, the Ombudsman recommends that Mr X's case again be considered under s 195A for the grant of a bridging visa.