

REPORT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O report on Mr X who has remained in restricted immigration detention for more than 48 months (four years).

The first report 1001886 was tabled in Parliament on 4 March 2015 and the second report 1002355 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.

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1984 |
| Ombudsman ID | 1001134-O |
| Date of DIBP's reports | 15 March 2016 and 13 September 2016 |
| Total days in detention | 1458 (at date of DIBP's latest report) |

Recent detention history

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| Since the Ombudsman's previous report (1002355), Mr X remained at Wickham Point Alternative Place of Detention. | |
| 16 June 2016 | Transferred to Melbourne Immigration Transit Accommodation. |

Recent visa applications/case progression

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| 14 September 2015 | Lodged an application for a Bridging visa which was found to be invalid on 16 September 2015. |
| 15 March 2016 | The Department of Immigration and Border Protection (the department) advised that Mr X's case was affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the International Treaties Obligations Assessment (ITOA) process was procedurally unfair. |
| 27 July 2016 | The Minister appealed the FFC 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. |
| 1 September 2016 | Filed a notice of discontinuance to withdraw his appeal to the HC regarding the negative ITOA decision. |
| 13 September 2016 | The department advised that Mr X's case had been identified for assessment against the s 195A guidelines for possible referral to the Minister. |

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 advised that Mr X has attended individual and group therapy sessions and specialist counselling for the management of an adjustment disorder, depression and a history of torture and trauma.

Information provided by Mr X

During a telephone conversation with Ombudsman staff on 23 February 2017 Mr X expressed frustration with his situation and stated that he experienced high levels of stress due to remaining in detention. When asked if he had discussed his symptoms with IHMS he said that he had been seeing the mental health team (MHT) every six months and also attended torture and trauma counselling every two months. He stated that while the MHT gave him some ideas on how to stay happy they were unable to help him very much.

Mr X advised that his lawyer had withdrawn from proceedings in the HC because they were under the impression that his case would be reassessed. He stated that since his case had not been reassessed, his lawyer had re-commenced proceedings in the HC with the first hearing due to take place in April 2017.

Mr X advised that he had no relatives in Australia that visit him aside from a cousin who lived in Sydney that had visited him once since he had been transferred to Melbourne ITA.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion. His case is affected by the HC judgment of 27 July 2016 and the department advised that it is considering the implications of this judgment.

Mr X has remained in detention for over four years. 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 recommends that priority be given to the resolution of Mr X's case.

The Ombudsman further recommends that Mr X be considered for the grant of a Bridging visa or a community detention placement while he awaits the resolution of his immigration status.