

**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 72 months (six years). The previous reports are:

819/12 tabled in Parliament on 22 August 2012
 1000597 tabled in Parliament on 5 March 2014
 1001405 tabled in Parliament on 27 August 2014
 1001688 tabled in Parliament on 4 March 2015
 1002168 tabled in Parliament on 9 September 2015.

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	1982
Ombudsman ID	1002908
Date of DIBP's reports	7 July 2015, 31 December 2015 and 30 June 2016
Total days in detention	2368 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002168), Mr X has remained at Villawood Immigration Detention Centre.

Recent visa applications/case progression

23 March 2015	The Department of Immigration and Border Protection (DIBP) finalised an International Treaties Obligation Assessment (ITOA) and determined that Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
8 April 2015	Referred to the Minister for consideration under ss 195A and 197AB of the <i>Migration Act 1958</i> . The Minister declined to intervene and noted he would consider Mr X's case once his identity was established.
7 May 2015	DIBP requested Mr X provide identity documentation to verify his identity. DIBP advised that Mr X's solicitor responded to this request on 25 May 2015.
18 June 2015	Referred to the Minister for consideration under s 195A to grant a Bridging visa.
21 June 2015	The Minister again declined to intervene and indicated that he would consider intervening once Mr X's identity is resolved.
7 July 2015	DIBP advised that a request made on 7 November 2012 on behalf of Mr X to the former Minister to consider exercising his power under s 46A to allow Mr X to make a valid visa application was finalised without referral to the Minister.
30 October 2015	DIBP received a request on behalf of Mr X for ministerial intervention under s 195A.

31 December 2015	DIBP advised that Mr X's case was being assessed against the guidelines under s 195A for possible referral to the Minister. DIBP also advised that Mr X's case is affected by the judgment handed down on 2 September 2015 by the Full Federal Court (FFC) ¹ which found that the ITOA process was procedurally unfair.
23 January 2016	DIBP advised that an assessment of Mr X's identity refuted a claim of statelessness.
6 May 2016	Referred on a first stage ministerial submission under s 195A.
30 June 2016	DIBP advised that it is considering the resolution of Mr X's immigration status.
27 July 2016	The Minister appealed the FFC decision and the High Court (HC) found that the ITOA process was not procedurally unfair.

Health and welfare

International Health and Medical Services (IHMS) reported that Mr X continued to receive treatment and support from the mental health team for an adjustment disorder with an anxious and depressed mood. On 19 December 2014 the IHMS psychiatrist attributed Mr X's mental health issues to prolonged detention and separation from his partner. It was noted that he had declined medication to treat his symptoms.

In May 2016 IHMS reported that from 1 July 2015 to 18 May 2016 Mr X had not accessed mental health support and IHMS considered his mental health issues were resolved at that time.

Other matters

18 April 2016	Mr X's solicitor lodged a complaint with the Ombudsman's office concerning Mr X's psychologist being refused permission to attend Villawood IDC to provide counselling to him. The Ombudsman's office is investigating this matter.
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Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion.

The Ombudsman notes the Government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged and indefinite immigration detention may pose. In the case of Mr X, he has remained in restricted immigration detention for more than six years and the Ombudsman continues to be seriously concerned about the effect of prolonged detention on Mr X's health.

The Ombudsman notes that Mr X's case has been referred for ministerial intervention under s 195A for consideration to grant a Bridging visa. The Ombudsman also notes that DIBP has advised that it is considering resolution of Mr X's case.

In consideration of the length of time Mr X has been detained the Ombudsman again strongly recommends that his case be expedited for finalisation as soon as possible and that he is considered for a Bridging visa.

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