

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 1002027 was tabled in Parliament on 17 June 2015 and the second report 1002536 was tabled in Parliament on 31 August 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
Year of birth	1988
Ombudsman ID	1001175-O
Date of DIBP's reports	16 May 2016 and 12 November 2016
Total days in detention	1458 (at date of DIBP's latest report)

Detention history

Since the Ombudsman's previous report (1002536), Mr X has remained at Facility B.

Recent visa applications/case progression

The Department of Immigration and Border Protection's (the department) 36-month report dated 16 November 2015 to the Ombudsman's office advised that Mr X had requested voluntary removal on 29 September 2015 but had yet to provide a letter to the department requesting withdrawal from the International Treaties Obligations Assessment (ITOA) process. The Ombudsman's previous report included this advice. On 16 May 2016 the department corrected the advice, stating that as the ITOA was an administrative process which the department had initiated, it could not be withdrawn by Mr X. The department further advised that while Mr X's removal was in progress, the ITOA would remain suspended.	
3 November 2015	Mr X withdrew a request for voluntary removal dated 29 September 2015.
20 November 2015	Mr X again requested voluntary removal from Australia.
14 January 2016	Mr X lodged a Bridging visa application which was found to be invalid on 18 January 2016.
February 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 ITOA process was procedurally unfair.
12 May 2016	The department lodged an application for a travel document for Mr X with the Consulate General of Country A in State B.
17 May 2016	Mr X signed an updated request for removal from Australia.

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

6 June 2016	Mr X attended an interview at the Consulate General of Country A in relation to his voluntary removal.
27 July 2016	The Minister appealed the FFC decision and the High Court found that the ITOA process was not procedurally unfair. ² The department advised that it is considering the implications of this judgment.
26 August 2016	Mr X commenced proceedings in the Federal Court (FC) asserting that he had not been removed as soon as reasonably practicable, as required by s 198(1) of the <i>Migration Act 1958</i> , and claimed various types of relief. ³
12 November 2016	The department advised that Mr X's ITOA, which it had initiated on 14 January 2015, remained suspended pending his voluntary removal.
9 December 2016	The FC found that the secretary of the department had not breached s 198 and on 6 February 2017 the proceedings were dismissed by consent.

Other legal matters

16 May 2016	The Australian Federal Police informed the department that it had decided not to investigate an assault at Facility B on 10 October 2015 which allegedly involved Mr X.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X continued on a long-term treatment program. He also attended regular pain specialist appointments.</p> <p>IHMS further advised that Mr X was previously monitored due to a hepatitis C condition. Routine blood tests from 2005 indicated the need for further investigations and a liver ultrasound. However, on 1 February 2016 Mr X refused both. On 21 April 2016 he declined to have his blood taken and did not want any taken in the future. He was said to be aware of the self-referral process to IHMS if he required future care for the condition.</p>	
28 April 2016	Mr X underwent a routine mental health assessment with an IHMS psychologist where he allegedly presented as angry, threatening and volatile. Mr X stated he was angered by not receiving information pertaining to his voluntary removal.

Other matters

24 May 2016	The Australian Human Rights Commission (AHRC) notified the department of a complaint from Mr X. On 26 May 2016 the department responded to AHRC. It stated on 12 November 2016 that it considered the complaint to be finalised as there had been no further communication from AHRC in relation to the matter.
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² *Minister for Immigration and Border Protection & Anor v SZSSJ & Anor* [2016] HCA 29.

³ *SZSZM v Secretary, Department of Immigration and Border Protection* [2016] FCA.

Information provided by Mr X

During a telephone conversation with Ombudsman staff in English on 2 March 2017 Mr X confirmed he was seeking voluntary removal but he said the department was experiencing problems in obtaining a Country A travel document as the authorities in Country A could not locate him in their system. He understood that when the previous paper-based system had been converted to a database a great deal of information had been lost in the process. Even though the consulate general had issued a passport to him in 2006, he had subsequently been told it should not have been issued as there had been no authorisation from Country A.

Mr X advised that his parents had sent 'everything' to the consulate in State B including a birth certificate from Country A for him and all the documentation had been in fact handed over on three or four occasions. He said he had been in limbo for a lengthy period of time.

He stated that the department had booked and cancelled flights to Country A on a number of occasions and he said that it would not tell him why. He advised that on one occasion his case manager had told him to pack up his belongings to prepare to go but the next day he was told there must have been a misunderstanding.

Mr X stated that it was only after he had initiated proceedings in the FC that he started 'getting answers'.

Mr X said that he was 'losing his mind' and kept to himself. He passed the time in long sessions in the gym. He described his sleep as 'patchy'. He did not know what to do and had experienced suicidal thoughts. He considered that if he were in prison he would at least have a release date. He said he had requested to be in a room by himself but could not even get this.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for more than four years. He has requested voluntary removal from Australia which the department is seeking to arrange. This has been delayed as the Government of Country A has not yet issued a travel document to enable Mr X's removal to Country A.

The Ombudsman notes that Mr X most recently requested voluntary removal on 20 November 2015. The Ombudsman further notes that the FC found on 9 December 2016 that the secretary of the department had done all he reasonably could to arrange a travel document for Mr X.

The Ombudsman recommends that the department investigate alternatives to restricted detention for Mr X unless it is confident that he will be removed in the near future.

The Ombudsman further notes Mr X's desire to have his own room while being held in detention and notes that he has been in detention for an extended period of time.

The Ombudsman recommends that Mr X be considered for placement in a single room if operational and other requirements permit this.