

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION 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 more than 66 months (five and a half years). The previous assessments are:

1649/13 tabled in Parliament on 4 December 2013

1001400 tabled in Parliament on 1 October 2014

1002129 tabled in Parliament on 14 October 2015

1000853-O tabled in Parliament on 14 September 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	1980
Ombudsman ID	1000853-O1
Date of DIBP's reviews	21 June 2016 and 18 December 2016
Total days in detention	2,004 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1000853-O), Mr X remained at Facility B.	
4 March 2016 – 7 April 2016	Transferred three times between various immigration detention facilities (IDFs).
October 2016	Transferred to community detention.

Recent visa applications/case progression

9 February 2016	The Administrative Appeals Tribunal affirmed the original decision to refuse Mr X's Temporary Protection visa (TPV) application. ¹
15 March 2016	Requested judicial review by the Federal Circuit Court (FCC).
19 August 2016	The FCC dismissed the review application.
9 September 2016	Mr X lodged an appeal against the FCC's decision in the High Court. On 18 December 2016 the Department of Immigration and Border Protection (the department) advised that the matter remained ongoing.
18 October 2016	The Minister intervened under s 197AB of the <i>Migration Act 1958</i> to allow Mr X to reside in community detention.

¹ Following legislative amendment, Mr X's original Protection visa application was taken to be a valid application for a TPV.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for depression, adjustment disorder and detention fatigue, which included several inpatient hospital admissions to stabilise his mental health.

Mr X was admitted to a psychiatric hospital for treatment from 8 March to 23 March 2016. His treating psychiatrist noted that his return to an IDF would likely cause him significant emotional turmoil. IHMS reported that Mr X engaged in food and fluid refusal from 23 March to 30 March 2016 in protest of his return to restricted detention. In April 2016 Mr X's mental state was assessed as stable and in May 2016 he accepted a referral for specialised counselling and psychiatric review.

In September 2016 Mr X's mental state deteriorated into a psychotic depression and he was referred for urgent psychiatric admission for pharmacological treatment. He was voluntarily admitted to hospital and initially remained an inpatient of the mental health secure ward due to risk of self-harm and low mood. Upon his discharge back to restricted detention he was followed up by the mental health team who noted his mood was much improved after being approved for release into the community.

Following his transfer to community detention, Mr X's psychiatrist recommended that he receive psychiatric monitoring and treatment through his general practitioner (GP) and community mental health as well as regular sessions with a psychiatrist. On 24 October 2016 Mr X was reviewed by his new GP who referred him for counselling.

IHMS further advised that Mr X received treatment for physical health concerns including a deviated nasal septum, bronchiectasis, asthma, condition C, facial cellulitis, left hand weakness and chest pain.

At the date of IHMS's latest report Mr X was on the waiting list for an appointment with an ear, nose and throat specialist with a view to surgery on his nasal septum. He was also awaiting an appointment at a hospital chest clinic in relation to his bronchiectasis after being unable to attend a scheduled appointment in March 2016.

IHMS further advised that Mr X remained on a waiting list for specialist review in relation to pain from condition C following referral in January 2016. IHMS indicated that the estimated time on this waiting list could be up to 16 months after the referral was submitted, with patients receiving appointments based on clinical urgency. IHMS did not consider a private surgery referral for Mr X to be warranted.

9 February 2016 and 22 March 2016	Incident reports recorded that Mr X was pursuing food and fluid refusal.
8 – 23 March 2016 and 22 September – 3 October 2016	Admitted to a psychiatric hospital.
8 March 2016 and 23 March 2016	Incident Reports recorded that Mr X threatened self-harm.
29 March 2016	An Incident Report recorded that Mr X self-harmed by swallowing a SIM card.

Other matters

On 22 September 2016 Mr X lodged a complaint with the Ombudsman's office about the treatment he was receiving for physical and mental health issues and the delay in surgery for condition C. He was concerned that he had gone to the bottom of the waiting list each time he was transferred between detention facilities. The complaint was investigated and closed on 29 May 2017.

Case status

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in detention for more than five years. At the time of the department's latest review Mr X was awaiting the outcome of judicial review.