

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

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

The first assessment 1002258 was tabled in Parliament on 17 June 2015 and the second assessment 1003267 was 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	1961
Ombudsman ID	1001247-O
Date of DIBP's reviews	14 August 2016 and 15 February 2017
Total days in detention	1,461 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003267), Mr X remained at Facility B.	
13 July 2016	Transferred to Facility C.
21 July 2016	Transferred to Facility B.
12 January 2017	Transferred to Facility D.
24 April 2017	The Department of Immigration and Border Protection (the department) advised that Mr X had been transferred to Facility E.

Recent visa applications/case progression

25 February 2016	Notified that the Minister had declined to intervene under s 417 of the <i>Migration Act 1958</i> .
31 May 2016	The Minister declined to intervene under s 197AB to allow Mr X to reside in community detention.
7 September 2016	The Federal Circuit Court (FCC) remitted Mr X's application for a Protection visa to the Administrative Appeals Tribunal (AAT) for reconsideration.
9 September 2016	The AAT commenced reconsideration of the Protection visa application.
6 January 2017	Found not to meet the guidelines for referral to the Minister for consideration under s 195A for the grant of a bridging visa.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has an ongoing adjustment disorder and major depression. He was reported to have been placed on Supportive Monitoring and Engagement observations on numerous occasions on account of self-harming behaviour and he received extensive psychological counselling and support from the IMHS mental health team. He refused medication for both mental and physical health concerns for long periods on a number of occasions. A general practitioner (GP) educated him on the consequences of medication non-compliance and noted that his decision-making ability was not impaired and that he was fully aware of the consequences.

After Mr X was observed to have worsening symptoms of emotional distress and deepening depression, investigative tests were undertaken and he required ongoing mental health support and remained on supportive monitoring and engagement observations for his safety. He was further reviewed by a psychiatrist in July 2016 when deterioration in his mental state and self-harm episodes were noted. He then accepted an offer of respite at a psychiatric hospital. He returned to the immigration detention facility after a week when he was assessed as being markedly improved in well-being and compliant with medication.

At a psychiatric review in January 2017 Mr X was found to have deteriorating depression associated with long term detention fatigue and increasing major depressive disorder and his medication was increased. He was said to be compliant with his medication regime and he continued to be monitored by a GP and the mental health team and receiving ongoing psychological counselling.

IHMS further advised that Mr X received treatment for physical health concerns including mild ischaemic heart disease for which he took prescribed medication, inflammation in the hips, atypical chest pain, type 2 diabetes and neck and upper back pain. On several occasions for extended periods he refused essential cardiac medication.

16 March 2016 – 27 December 2016	Incident Reports recorded that Mr X threatened self-harm on multiple occasions and self-harmed on four occasions.
20 August 2016	An Incident Report recorded that Mr X refused food and fluid.

Recent detention incidents

Incident Reports recorded that Mr X was allegedly involved in many behavioural incidents of a minor nature including abusive or aggressive behaviour towards detention centre staff and other detainees, creating disturbances and assaulting other detainees.

Other matters

14 August 2016	The Department advised that Mr X's complaint before the Australian Human Rights Commission remained ongoing.
4 May 2017	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman regarding his transfer to a detention facility in City F, away from his two sons. He complained that his transfer was having an adverse effect on his severely autistic son who has stopped interacting at all with his family and friends since his father's transfer. The complaint was finalised on 17 May 2017.

Information provided by Mr X

During an interview with Ombudsman staff at Facility E on 23 June 2017 Mr X advised that he had recently been transferred to City F even though his family was in City G. He said his detention was particularly hard on his 12-year-old son who has profound autism. Prior to his detention he and his wife were able to provide their son with the support he requires, but now his son has lost half of his support network. Mr X said that his son blames himself for his father's detention and has tried on several occasions to run away in an attempt to find him, which Mr X found extremely distressing.

Mr X was also concerned about the impact of his detention on his 16-year-old son, who has been getting into trouble and is getting low grades at school. He said it was as if both sons did not have a father anymore.

Mr X advised that his physical and mental health have deteriorated in detention. He said he had tried to commit suicide 10 times in the last 12 months and five times since being transferred to City F. He had recently told the detention centre staff that he would kill himself if he wasn't transferred back to City G by a certain date, but he claims they have told him that he will remain in City F if he continues to try to kill himself.

He claimed that it is difficult for him to manage his diabetes in detention, because the food provided is very oily and there is a lot of rice and potato in everything. He advised he refused to go outside the centre as he would be handcuffed and also claimed he that the emergency response team at Facility D had torn his shoulder muscles and he was still in severe pain.

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. At the time of the department's latest review Mr X was awaiting reconsideration of his Protection visa application following remittal by the FCC to the AAT.

The Ombudsman's previous report (1003267) noted that Mr X's case had been identified for referral to the Minister under s 197AB for consideration of a community detention placement and recommended that the department expedite this referral.

On 8 November 2016 the Minister noted the recommendation and advised that he had considered Mr X's case under s 197AB and declined to intervene.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged restricted immigration detention may pose.

The Ombudsman also notes that Mr X is currently detained in City F while his young children live in City G, and that this separation appears to be having a significant impact on the wellbeing of both Mr X and his sons. The Ombudsman recommends that consideration be given to transferring Mr X to a facility in or near City G.

The Ombudsman further recommends, in light of the significant length of time Mr X has remained in detention and his poor and deteriorating mental health, that alternative placement options for Mr X be investigated.