

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fourth s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 54 months (four and a half years).

The first assessment 1000979 was tabled in Parliament on 12 February 2014, the second assessment 1001477 was tabled in Parliament on 18 March 2015 and the third assessment 1002368-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1993
<b>Ombudsman ID</b>	1002368-O1
<b>Date of DIBP's review</b>	21 April 2017
<b>Total days in detention</b>	1,640 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002368-O), Mr X remained at Facility B.	
10 January 2017	Transferred to Villawood Immigration Detention Centre (IDC).

### Recent visa applications/case progression

The Department of Immigration and Border Protection (the department) advised that in its 48-month review dated 21 October 2016 it had incorrectly stated that on 9 September 2016 Mr X was referred on a ministerial submission for consideration of lifting the bar under s 46A of the <i>Migration Act 1958</i> . The department advised that in fact, on 16 December 2016, Mr X's request for ministerial intervention was assessed against the s 46A guidelines for referral and found not to meet them. Mr X was notified of this outcome on 20 December 2016.	
10 January 2017	Referred for involuntary removal from Australia.
16 January 2017	Lodged an application for an injunction against his removal with the High Court.
3 March 2017	The Minister conceded Mr X's case was affected by error. The department advised that in consequence Mr X's removal would not proceed and Mr X and his family would now have their data breach claims considered through the temporary protection visa process. As a result they had been identified for referral to the Minister under s 46A to lift the bar to allow a further application.
3 April 2017	Following the halting of Mr X's removal, his case was identified for consideration of possible transfer to Facility B. On 21 April 2017 the department advised the matter remained ongoing.
21 April 2017	The department advised it was currently preparing a submission under s 46A for the Minister's consideration.

## Health and welfare

International Health and Medical Services (IHMS) stated that on 10 December 2016 Mr X advised that he was tired of his situation and struggled to cope when his wife, Ms Y, and daughter left after visiting him. In his induction health assessment at Villawood IDC he indicated that he felt stressed and depressed from being separated from his wife and daughter but declined a mental health referral.

IHMS further advised that Mr X had been investigated for deteriorating vision in his left eye since 2012 when an optometry report stated he had been diagnosed with Coats disease. Since then he had attended specialist appointments with an ophthalmologist reporting Coats disease as a likely diagnosis. He attended ophthalmology appointments in November and December 2016 where he underwent laser surgery. Mr X was unable to attend an appointment on 11 January 2017 due to his transfer to a detention facility in a different state. IHMS stated it was following up for the documents from his latest ophthalmology appointments and that he was scheduled to attend an internal optometry appointment on 8 March 2017 with the condition to be monitored by IHMS.

IHMS also advised that Mr X was diagnosed with and received treatment for asthma and hay fever. He was provided with education and repeatedly advised to quit smoking.

## Other matters

Mr X's wife, Ms Y and daughter Miss Z, continue to reside in community detention in the same city as Facility B and are the subject of Ombudsman assessment 1000790-O.

## 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 an immigration detention facility for more than four and a half years. At the time of the department's latest review it was making arrangements to refer Mr X and his family's case to the Minister to allow a further application for a temporary visa.

The Ombudsman notes the department's advice that Mr X has been identified for consideration of a possible transfer to Facility B so that he will be located in the same city as his wife and daughter who are in community detention and that the matter remained ongoing at the date of the department's latest review. The Ombudsman further notes advice from IHMS that Mr X presented with mental health concerns related to his separation from his wife and daughter.

**The Ombudsman recommends that if this matter has not already been finalised, it be expedited.**