

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X who has remained in immigration detention for more than 42 months (three and a half years).

The first assessment 1002240-O was tabled in Parliament on 23 November 2016. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1968
Ombudsman ID	1002240-O1
Date of DIBP's reviews	25 November 2016 and 26 May 2017
Total days in detention	1,276 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002240-O), Mr X has remained at Facility B.

Recent visa applications/case progression

4 August 2016	Found to meet the guidelines for referral to the Minister for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a Removal Pending Bridging visa.
21 October 2016	Lodged a bridging visa application. On 25 October Mr X was notified that the application was invalid under s 501E.
22 December 2016	The Federal Court (FC) remitted the decision to refuse to grant Mr X a visa under s 501 with the direction that his application for a Protection visa be reconsidered.
26 May 2017	The department advised that it was preparing a submission to the Minister to provide advice and possible options regarding Mr X's case.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received specialist treatment for a finger condition and back pain. In January 2017 he was reviewed by an occupational therapist and provided with daily exercises. IHMS reported that Mr X declined a plastic surgery telehealth consultation and further appointments with the occupational therapist.

IHMS further advised that Mr X did not receive treatment for any major mental health issue during this assessment period.

Information provided by Mr X

During an interview with Ombudsman staff at Facility B in May 2017 Mr X advised that he did not understand why he is being kept in detention when he has been found to be owed protection and was struggling with the uncertainty of his immigration status.

Mr X stated that his conviction arose after he was coerced into smuggling drugs into Australia to repay a group from which he had borrowed money for a knee operation. He advised that his wife warned him that it was not safe to return to Country A as the group had visited his family and demanded repayment.

Mr X advised that he contacts his wife and four children who live in his home country twice a week and was the sole provider for them. He said that while he was in a correctional facility he was able to work and send money back to his family, but since being in immigration detention he has been unable to support them and constantly worries about their welfare. He said that he had recovered from his operation and could work to support himself if he was granted a visa.

Mr X stated that security at Facility B was becoming increasingly restrictive. He said that he was handcuffed during escorts to his medical appointments until he lodged a complaint. He stated that following the complaint he was not placed in handcuffs during escorts but had not been on any excursions. He further stated that he felt he was unfairly targeted for room searches.

Mr X reported that he had broken his finger in detention and his therapist had provided him with putty to exercise his finger which he was supposed to use five times a day. He said that he was not allowed to take the putty into the detention centre as it was a security risk and instead had to attend IHMS to undertake the exercises. He advised that he stopped going to appointments with the therapist because he was unable to undertake the recommended exercises without significant inconvenience. He stated that after he ceased therapy he had found it difficult to get an appointment to undergo surgery, but one was now pending.

Ombudsman assessment/recommendation

Mr X was detained on 27 November 2013 after being released from a correctional facility and has been held in an immigration detention facility for more than three and a half years.

On 8 June 2014 he was found to be owed protection under the complementary protection criterion and on 6 July 2015 his application for a Protection visa was refused under s 501.

On 22 December 2016 the FC remitted Mr X's case with the direction that the department reconsider his application for a Protection visa and on 26 May 2017 the department advised that it was preparing a ministerial submission on Mr X's case.

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

In light of the length of time Mr X has remained in detention the Ombudsman recommends that the department expedite the resolution of Mr X's immigration status.