

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 immigration detention for more than 48 months (four years).

The first assessment 1003104 was tabled in Parliament on 11 November 2015 and the second assessment 1003517 was tabled in Parliament on 15 February 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1964
Ombudsman ID	1001873-O
Date of DIBP's reviews	14 October 2016 and 13 April 2017
Total days in detention	1,458 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003517), Mr X remained in community detention.	
7 July 2016	Transferred to Facility B.

Recent visa applications/case progression

23 June 2016	The Minister revoked Mr X's community detention placement under s 197AD of the <i>Migration Act 1958</i> following a criminal conviction.
18 July 2016	Safe Haven Enterprise visa (SHEV) application refused.
20 July 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
7 September 2016	The IAA affirmed the decision to refuse Mr X's SHEV application.
13 April 2017	The Department of Immigration and Border Protection (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he has been referred for removal from Australia. However, as he is unwilling to leave voluntarily and his ongoing health concerns are a barrier to removal, the department has identified Mr X for referral to the Minister for consideration of a community detention placement under s 197AB.

Criminal history

June 2016	Mr X was convicted of driving a motor vehicle without a valid licence. He was fined and disqualified from holding or obtaining a driver's licence for a period of nine months.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has commenced treatment for hepatitis C which requires twelve weeks of medicated treatment and frequent specialist review. Mr X has reported associated ongoing symptoms of liver cirrhosis, and severe abdominal and back pain. Additionally, Mr X was referred to a pain management clinic for review of options to manage ongoing gallbladder related pain. Upon specialist review it was advised that Mr X cannot undergo surgery for his gallbladder concerns until he has completed his hepatitis C treatment and his liver has improved.</p> <p>IHMS further advised that upon review by a mental health nurse in October 2016 Mr X advised that he thought his mental health was affected by his chronic pain and he reported symptoms of low mood and poor sleep. Mr X was reviewed by a psychiatrist in January 2017 and it was noted that he displayed symptoms of anxiety and depression associated with his significant physical health concerns.</p>	
22 March 2016	An Incident Report recorded that Mr X was allegedly assaulted by a friend in the community and presented to a hospital.
7 June 2016	An Incident Report recorded that Mr X presented to a hospital due to severe back pain.
24 October 2016	An Incident Report recorded that Mr X fell and hurt his shoulder. He was provided with pain relief medication.

Other matters

28 March 2017	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to concerns regarding the health services provided. At the time of the department's latest review the department was preparing a response.
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Information provided by Mr X

<p>During an interview with Ombudsman staff at Facility B in May 2017 Mr X advised that his ongoing health concerns are very distressing for him and that he continues to experience a lot of pain associated with his gallbladder and liver conditions. He advised that he is concerned about the treatment and support he receives both for his physical and mental health and that he thinks he would be better equipped to manage his health concerns if he was in the community. He stated that he thinks he is going crazy in restricted detention and feels like he often forgets things.</p> <p>He stated that he has two daughters but has not had contact with them for months.</p>

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 detention for more than four years. He has no matters before the department, the courts or tribunals and has been referred for removal action.

The Ombudsman notes that Mr X's removal is likely to be protracted. The department advised that due to additional ongoing barriers preventing removal, Mr X has been identified for referral to the Minister for consideration of a community detention placement under s 197AB.

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 significant length of time Mr X has remained in detention and his significant health concerns, the Ombudsman recommends that if Mr X has not yet been referred to the Minister, that a referral be expedited for consideration for a community detention placement.