

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION 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 restricted immigration detention for more than 42 months (three and a half years).

The first assessment 1003157 was tabled in Parliament on 31 August 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	1985
Ombudsman ID	1001913-O
Date of DIBP's reviews	18 July 2016 and 10 January 2017
Total days in detention	1,284 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1003157), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

22 February 2016	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a new temporary visa application. He accepted the offer on 23 February 2016 and was assigned a provider.
11 April 2016	Lodged a new Temporary Protection visa (TPV) application. Mr X's original TPV application was subsequently withdrawn.
21 July 2016	TPV application refused.
22 July 2016	Mr X's case was referred to the Immigration Assessment Authority (IAA) for review.
24 August 2016	The IAA affirmed the decision to refuse Mr X's TPV application.
19 September 2016	Requested judicial review by the Federal Circuit Court. A hearing was scheduled for 1 February 2017.
12 December 2016	The Minister declined to intervene under s 195A of the <i>Migration Act 1958</i> to grant a Bridging visa.
10 January 2017	The Department of Immigration and Border Protection (the department) advised that Mr X remains a person of interest to the department in relation to alleged criminal matters offshore and is under investigation by an external agency regarding a national security allegation.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continues to engage with the mental health team for the management of a history of self-harm and ongoing frustration associated with restricted detention. Following incidents of self-harm Mr X was placed on Supportive Monitoring and Engagement observations. A review by a psychiatrist in September 2016 noted that Mr X displayed signs of detention fatigue and presented with impulsive personality traits. It was recommended that a speedy resolution of his immigration status would be beneficial for his overall mental health and prevention of further self-harm behaviour.

IHMS further advised that Mr X received treatment for ongoing back, shoulder and neck pain with related headaches. He was prescribed with pain relief medication and was referred to an orthopaedic specialist for review of his shoulder, with an appointment yet to be scheduled due to long waiting lists.

18 February 2016	An Incident Report recorded that Mr X threatened self-harm.
24 – 25 August 2016	Incident Reports recorded that Mr X self-harmed.
26 August 2016	Incident Reports recorded that Mr X was restrained to prevent self-harm and required transportation to hospital for further assessment following an aggressive outburst.

Recent detention incidents

14 July 2016	An Incident Report recorded that Mr X was the alleged victim of sexual assault by another detainee. The matter was referred to the police.
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Other matters

7 April 2016	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman stating that he had been given conflicting information about his TPV applications. On 20 September 2016 the department provided its response and on 22 December 2016 the complaint was finalised.
25 October 2016	The Australian Human Rights Commission finalised its investigation of Mr X's complaint lodged on 16 September 2015.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 25 May 2017 Mr X advised that he believed his security concerns had been cleared and finalised.

He stated that he keeps himself busy in detention. His mental health is sometimes good, but sometimes he finds it difficult to remain positive in restricted detention. He said that he sometimes thinks about suicide and not knowing how long he will remain in detention makes life very hard. He said that a psychiatrist assessed that being in the community would resolve his mental health concerns.

Mr X further advised that he has contact with some of his family, but it can often make him very upset when he speaks to them. He believes he is a good and strong person, and he just tries to help others and think positive.

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 three and a half years. At the time of the department's latest review Mr X was awaiting the outcome of judicial review.

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 further notes that IHMS advised that a speedy resolution of Mr X's immigration status would be beneficial for his overall mental health and prevention of further self-harm.

In light Mr X's significant history of self-harm and the length of time he has remained in detention, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement and s 195A for the grant of a Bridging visa.