

ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O assessment on Mr X who has remained in immigration detention for more than 84 months (seven years). The previous assessments are:

851/12 tabled in Parliament on 4 December 2013
1001237 tabled in Parliament on 29 October 2014
1001908 tabled in Parliament on 9 September 2015
1003456 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 ¹
Year of birth	1987
Ombudsman ID	1000319-O
Date of DIBP's review	27 March 2017
Total days in detention	2,552 (at date of DIBP's review)

Recent detention history

Since the Ombudsman's previous assessment (1003456), Mr X remained at Facility A.	
14 January 2017	Transferred to Facility B.

Recent visa applications/case progression

30 November 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a Bridging visa.
27 March 2017	The department advised that Mr X remains on a removal pathway.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X remains on a waiting list for a surgical procedure for a nasal condition and was scheduled to attend surgical review of a skin condition in March 2017. Additionally, Mr X received treatment and was referred for physiotherapy for ongoing shoulder pain, but has reported little improvement.	
Mr X attended a health and wellbeing session in March 2016 with no concerns reported and has declined ongoing mental health support.	

¹ Mr X's citizenship was previously recorded as 'stateless (claimed)' until the department's most recent review of 27 March 2017.

Information provided by Mr X

During an interview with Ombudsman staff at Facility B Mr X advised that he has been encouraged by case management to return to Country A, but he stated that he cannot return because he is stateless.

He advised that the pressure to return has affected his mental health as well as remaining in restricted detention for such a long time. He stated that because of how low he feels he doesn't engage in any of the activities and programs. Additionally he advised that he continued to experience a lot of pain in one shoulder and his nasal condition made it hard to breathe properly.

Mr X said that he just wants to be able to live in the community, because he has been in restricted detention for approximately six years and it is affecting his health. He arrived in Australia when he was 22 years old and he feels like his life is being wasted in restricted detention.

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 seven years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

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 the absence of any recent behavioural and security concerns, the Ombudsman recommends that if Mr X was not granted a Bridging visa following the referral of his case to the Minister on 30 November 2016, his case be referred on a new ministerial submission under s 195A for consideration of the grant of a Bridging visa.

The Ombudsman further recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement.