

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 48 months (four years). The previous assessment 1002824 was tabled in Parliament on 15 February 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1001613-O
Date of DIBP's reports	16 December 2016 and 16 June 2017
Total days in detention	1,458 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment (1002824), Mr X has remained at Facility B.

Recent visa applications/case progression

27 June 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review of the decision to refuse his Protection visa application.
22 September 2016	AAT affirmed original decision.
27 October 2016	Applied to the Federal Circuit Court (FCC) for judicial review. The matter was dismissed on 10 March 2017.
27 March 2017	Applied to the Full Federal Court (FFC) for judicial review.
16 June 2017	The Department of Immigration and Border Protection (the department) advised that Mr X remained the subject of an adverse security assessment.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment and continued to engage with the mental health team for the management of an adjustment disorder with depression and anxiety. Upon review in November 2016 a psychiatrist advised that Mr X's mental state was deteriorating due to the uncertainty regarding his future and his prolonged detention. The psychiatrist recommended that he be placed in the community.

Following a number of minor incidents, Mr X was relocated to Compound C, the highest security compound at Facility B. On 8 March 2017, Mr X informed a psychiatrist of his relocation, and the psychiatrist advised that this was inappropriate and raised concerns about his safety. In March 2017 Mr X was assaulted by other detainees and was transferred to hospital with extensive bruising and a fractured finger. Upon return to Facility B he was placed in a different dormitory and was monitored for his own protection. He was later relocated to a different compound at Facility B. A psychiatrist identified that he was emotionally and physically traumatised by the incident and in May 2017 reported associated fear, anxiety and nightmares. He also reported ongoing headaches, breathing difficulties and finger pain and a number of investigative tests were scheduled.

IHMS further advised that Mr X attended physiotherapy and was prescribed with medication for chronic back pain. Upon specialist review in January 2017 it was advised that no further surgical consultation was required. His condition continues to be monitored by IHMS as required.

18 July 2016	An Incident Report recorded that Mr X threatened self-harm and refused food and fluid.
9 August 2016 and 8 February 2017	Incident Reports recorded that Mr X threatened self-harm.
March 2017	Incident Reports recorded that a number of other detainees assaulted and threatened to kill Mr X.

Other matters

12 July 2016	The department was notified that Mr X had lodged a complaint with the Australian Human Rights Commission. On 22 August 2016 the department provided a response. The matter remained ongoing at the date of the department's latest report.
28 March 2017	The Office of the Commonwealth Ombudsman notified the department that the investigation of Mr X's complaint, lodged on 21 July 2016, had been finalised.

Information provided by Mr X

During an interview with Ombudsman staff in September 2017 Mr X stated that he had legal representation and was waiting for a hearing date to be scheduled for his appeal with the FFC. He reiterated that he believes his adverse security assessment is based on unfounded and malicious allegations of people smuggling made by people who disapproved of his marriage. He further explained that he had not been interviewed to review his assessment since 2012.

He explained that he arrived in Australia on a Partner visa as he was married to an Australian citizen. However, after being re-detained his wife asked for a divorce and remarried because she was unable to cope with being alone.

He explained that friends visit him every week, and that he sometimes calls his mother overseas, but he has not told her that he is in immigration detention as he is worried that this would upset her and she may become unwell or suffer a heart attack.

He stated that his mental health has deteriorated and he spends most of his time in his room crying because of his anxiety and fear. He stated that he feels like he is broken because he has spent so long in detention and everything is so uncertain. He said that he just wants to be able to start his life again. He stated that he attends counselling but nothing really helps while he continues to be in detention.

During the interview Mr X provided Ombudsman staff with a copy of a psychological assessment report produced by a specialist counselling service on 7 August 2017. The assessment advised that Mr X presented with symptoms of anxiety and depression as well as post-traumatic stress associated with a history of discrimination and traumatic experiences in Afghanistan and his prolonged detention. The assessment recommended that Mr X be closely monitored and provided with ongoing counselling for further mental health support.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention. He is the subject of an adverse security assessment and has been held in an immigration detention facility for more than four years. At the time of the department's latest report Mr X was awaiting the outcome of judicial review.

The Ombudsman notes with serious concern that without changes to current policy and practice relating to individuals who are the subject of adverse security assessments, Mr X will remain in an immigration detention facility for an indefinite period. The Ombudsman remains seriously concerned about the risk that an indeterminate period of detention poses to Mr X's mental and physical health.

The Ombudsman notes with concern the advice from IHMS that prolonged detention continues to have a detrimental effect on Mr X's mental health, compounded by trauma associated with an incident of assault. The Ombudsman further notes that a psychiatrist recommended in November 2016 that Mr X be transferred to the community in order to improve his mental health.

The Ombudsman further notes with concern that Mr X suffered a serious assault while detained in Compound C at Facility B, despite his psychiatrist raising concerns that his placement in this compound was inappropriate and that his safety would be at risk.

1. Given these concerns, the Ombudsman recommends that the department ensure that it does consider individual vulnerabilities when making placement decisions.
2. The Ombudsman further recommends that the department explore options to provide Mr X with further support to manage his psychological and physical health in consultation with Mr X and IHMS, including in relation to trauma associated with the assault.
3. The Ombudsman strongly recommends that the government prioritise finding a durable solution for individuals with adverse security assessments.