

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 54 months (four and a half years). The previous assessment 1001913-O was tabled in Parliament on 6 September 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	1985
Ombudsman ID	1001913-O1
Date of department's reports	29 June 2017 and 2 January 2018
Total days in detention	1,641 (at date of department's latest report)

Recent detention history

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

Recent visa applications/case progression

19 September 2016	Applied to the Federal Circuit Court (FCC) for judicial review.
10 November 2017	The FCC quashed the Immigration Assessment Authority's (IAA) decision and remitted Mr X's case for reconsideration according to law.
29 May 2017	Found not to meet the guidelines for referral to the Minister under s 197AB of the <i>Migration Act 1958</i> for the grant of a community placement.
2 January 2018	The Department of Home Affairs (the department) advised that Mr X had been issued a non-prejudicial (clear) security assessment and as a result was no longer of interest to the department or an external agency. The department further advised that Mr X had been identified for possible referral to the Minister under s 195A for the grant of a bridging visa.
16 January 2018	The IAA affirmed the decision to refuse Mr X's Temporary Protection visa (TPV) application.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to engage with the mental health team for the management of a history of self-harm, detention fatigue and stress regarding his ongoing detention and immigration pathway. He also received treatment and was reviewed by specialists as required for headaches, shoulder pain, back pain, and urological concerns.

On 23 January 2018 Mr X commenced refusing food and fluid and on 1 February 2018 he was transported to hospital. On 5 February 2018 the Office of the Commonwealth Ombudsman (the Office) requested an update on Mr X's condition and on 8 February 2018 the department advised that Mr X had previously recorded a video regarding his health and stated that he wished to refuse treatment, food and fluid and did not wish to be resuscitated. He stated that he intended for his wishes to continue to apply in the event that he became legally incompetent.

A psychiatrist reviewed Mr X on 5 February 2018 and advised that he believed that Mr X's judgement in choosing fasting as a protest strategy was affected by his intense feelings of anger and frustration resulting from his immigration situation. The psychiatrist advised that there was no evidence that his judgement was specifically impaired by mental illness when he made his original directive to refuse food and fluid.

The psychiatrist further advised that as of 5 February 2018 Mr X was delirious and had lost mental capacity. However, there was no clear evidence to cast doubt on the previous assessment that he was legally competent when he first decided to refuse food and fluid. The psychiatrist advised that if Mr X were to voluntarily accept feeding his original directive should be disregarded and he should be re-fed. However, he further advised that while efforts should continue to be made to persuade him to change his mind, forced feeding would be unethical in these circumstances.

On 7 February 2018 Mr X agreed to commence a re-feeding program after refusing food and fluid for a period of 16 days. He was moved to a critical care unit and advised that the re-feeding program and rehabilitation may take four to six weeks.

22 January 2018	An Incident Report recorded that Mr X self-harmed.
23 January 2018 – 7 February 2018	An Incident Report recorded that Mr X refused food and fluid. He was transported to hospital on 1 February 2018.

Other matters

24 April 2017	Mr X lodged a complaint with the Office in relation to his eligibility for a bridging visa under s 195A. On 29 June 2017 the department provided a response and on 15 August 2017 the complaint was finalised.
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Ombudsman assessment/recommendation

Mr X was detained on 6 July 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than four and a half years.

Mr X's TPV application was refused on 21 July 2016 and on 24 August 2016 the IAA affirmed the refusal.

On 10 November 2017 the FCC quashed the IAA's decision and remitted Mr X's case for reconsideration according to law.

On 16 January 2018 the IAA reaffirmed the decision to refuse Mr X's TPV application.

At the date of drafting this assessment, Mr X was still within the timeframe to apply for judicial review of the IAA's decision.

The Ombudsman's previous assessment recommended that Mr X's case be referred to the Minister for consideration under s 197AB for a community placement and s 195A for the grant of a bridging visa.

On 6 September 2017 the Minister advised that Mr X's case was being reviewed for possible referral for consideration under s 195A for the grant of a bridging visa and that Mr X did not meet the guidelines against s 197AB for reconsideration of a community placement.

On 2 January 2018 the department advised that Mr X had been issued with a non-prejudicial (clear) security assessment and as a result was no longer of interest to the department or an external agency.

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. IHMS has advised that Mr X has ongoing mental health concerns associated with his ongoing detention. The department further advised that following 16 days of food and fluid refusal, associated with stress regarding his immigration pathway, Mr X will undergo a re-feeding program for a period of four to six weeks.

In light of Mr X's mental health concerns and non-prejudicial (clear) security assessment, the Ombudsman recommends that he be placed in an environment that is less restrictive than an immigration detention centre and more appropriately tailored to accommodating vulnerable individuals, such as a designated alternative place of detention in the community.