

ASSESSMENT BY THE COMMONWEALTH 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 66 months (five and a half years). The previous assessments are:

1001283 tabled in Parliament on 18 June 2014

1001513 tabled in Parliament on 22 October 2014

1001964 tabled in Parliament on 3 June 2015

1002467 tabled in Parliament on 14 September 2016

This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1988 ¹
Ombudsman ID	1000893-O
Date of DIBP's reviews	27 October 2016 and 27 April 2017
Total days in detention	2,004 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002467), Mr X has remained at Facility B.

Recent visa applications/case progression

13 April 2016	The Minister lifted the bar under s 46A of the <i>Migration Act 1958</i> to allow Mr X to lodge a temporary visa application. ²
29 April 2016	Lodged a Temporary Protection visa (TPV) application.
27 July 2016	The Minister appealed the Full Federal Court decision and the High Court found that the International Treaties Obligation Assessment process was not procedurally unfair. ³
27 October 2016	The Department of Immigration and Border Protection (the department) advised that Mr X's case was identified for possible inclusion on a ministerial submission under s 195A for the grant of a bridging visa. On 31 March 2017 Mr X's case was not referred to the Minister.
14 December 2016	TPV application refused. On the same day Mr X applied to the Administrative Appeals Tribunal (AAT) for merits review.
5 April 2017	AAT remitted Mr X's case to the department for consideration with the direction that he was a person to whom Australia owes protection obligations.

¹ Mr X's year of birth was previously recorded as 1994, until the department's review of 27 April 2017, which recorded it as 1988.

² In its review of 27 October 2016 the department advised that its previous review, dated 28 April 2016, incorrectly reported that the Minister had lifted the bars under ss 46A and 48B. On 13 April 2016 the Minister only lifted the bar under s 46A.

³ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Other legal matters

September 2016	Mr X was charged with damaging Commonwealth property and received a six month good behaviour bond.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was provided with treatment for a personality disorder and a history of torture and trauma. In September 2016 a treating psychiatrist noted that Mr X presented with stress related to sharing accommodation with other detainees and often declined to take his prescribed medication. He was referred for specialist counselling on 19 August 2016 after presenting to the mental health team (MHT) with difficulty sleeping, tiredness and flashbacks. On 5 March 2017 IHMS reported that Mr X declined any further engagement with the MHT.

IHMS further advised that Mr X received treatment for hand pain related to a previous injury and continued to be monitored by a general practitioner.

Ombudsman assessment/recommendation

Mr X was detained on 1 November 2011 after arriving in Australia by sea and has been held in detention for more than five and a half years.

On 29 April 2016 Mr X lodged an application for a TPV and on 14 December 2016 his TPV application was refused. The AAT reviewed the decision and on 5 April 2017 the application was remitted to the department with the direction that Mr X was a person to whom Australia owes protection obligations.

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 with serious concern the significant length of time Mr X has remained in restricted detention and his ongoing mental health concerns.

In light of these concerns, the Ombudsman strongly recommends that Mr X's case be referred to the Minister for consideration under s 197AB for a community detention placement or that consideration be given to transferring Mr X to a less restrictive detention facility while he awaits the resolution of his immigration status.