

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 1003173 was tabled in Parliament on 8 November 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	1985
Ombudsman ID	1001929-O
Date of DIBP's reports	24 January 2017 and 27 July 2017
Total days in detention	1,463 (at date of DIBP's latest report)

Recent detention history

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

Recent visa applications/case progression

5 January 2017	The Department of Immigration and Border Protection (the department) obtained a medical assessment of Mr X which supported the request for a guardian to be appointed on his behalf.
9 March 2017	Mr X's uncle and cousin were appointed as his guardians.
5 April 2017	Mr X's guardians lodged a Temporary Protection visa (TPV) application on his behalf.
16 June 2017	The department agreed to accept a further written submission in relation to Mr X's TPV application in lieu of an interview.
27 July 2017	The department advised that Mr X remains a person of interest to an external agency and that the Minister would not consider Mr X's case under ss 197AB or 195A of the <i>Migration Act 1958</i> until he ceased to be a person of interest to the external agency.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has significant memory loss and concentration impairment related to a brain injury and post-concussion syndrome. In October 2016 and January 2017 a psychiatrist recommended that he be appointed a guardian due to his lack of capacity to make decisions regarding his own welfare. In May 2017 Mr X was diagnosed with an adjustment disorder and prescribed with medication after he presented with increased stress and frustration. His condition continues to be regularly monitored by the mental health team.

IHMS further advised that Mr X received treatment for high cholesterol and knee pain.

Other matters

The department advised that Mr X remains at Facility B so he can be supported by his uncle and cousin who reside in City C.

Ombudsman assessment/recommendation

Mr X was detained on 25 July 2013 after arriving in Australia by sea and has been held in an immigration detention facility for more than four years.

On 9 March 2017 Mr X's cousin and uncle were appointed as his guardians and on 5 April 2017 they lodged a TPV application on his behalf.

The Ombudsman's previous assessment recommended that the department follow up with the external agency to confirm whether there has been any recent change in Mr X's status as a person of interest.

On 2 November 2016 the Minister noted the recommendation and advised that the external agency has confirmed that there has been no change to Mr X's status as a person of interest.

The Ombudsman notes the department's advice that the Minister will not consider Mr X's case under ss 197AB or 195A until he ceases to be a person of interest to 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 significant memory loss and concentration impairment related to a brain injury and post-concussion syndrome. Due to these mental health concerns and his lack of capacity to make decisions regarding his own welfare, Mr X's uncle and cousin were appointed as his guardians and he remains at Facility B that he can be supported by them.

In light of Mr X's significant mental health concerns, the Ombudsman recommends that the department again follow up with the external agency to confirm whether there has been any recent change in Mr X's status as a person of interest.