

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 restricted immigration detention for a cumulative period of more than 36 months (three years).

The first assessment 1002370-O was tabled in Parliament on 1 March 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	1986
Ombudsman ID	1002370-O1
Date of DIBP's review	18 April 2017
Total days in detention	1,095 (at date of DIBP's review)

Recent detention history

Since the Ombudsman's previous assessment (1002370-O), Mr X has remained at Yongah Hill Immigration Detention Centre (IDC).

Recent visa applications/case progression

18 November 2016	Mr X refused to sign a Request for Removal form and on 21 November 2016 was referred for involuntary removal.
7 January 2017	The Department of Immigration and Border Protection (the department) lodged an application for a temporary travel document with Country A officials.
18 April 2017	The department advised that Mr X's complaint with the United Nations Committee Against Torture (UNCAT) is no longer considered to be a barrier to his removal from Australia. This is due to a recent policy change regarding involuntary removals of a person where the Minister has decided that the person's complaint to the United Nations Committees or the Interim Measures Requests issued by the United Nations Committees is not warranted. The department advised that it was progressing Mr X's involuntary removal from Australia.

Health and welfare

International Health and Medical Services advised that Mr X attended a routine mental health assessment in January 2017 and reported that he continued to worry about his family in Country B and his immigration pathway. He declined a follow-up review with the mental health team.

Information provided by Mr X

During an interview with Ombudsman staff at Yongah Hill IDC on 23 May 2017 Mr X advised that his family live in a refugee camp in Country B and that he contacts them around once a week. He also has an uncle in Sydney who used to visit him often when he was at Villawood IDC. He advised that he feels quite depressed, but did not want to talk to anyone about it. He said that being transferred to Villawood IDC so his uncle could support him, or being in the community would really benefit his mental health.

He explained that he was worried about being returned to Country A as he believed that he would be sent to jail for leaving the country illegally, and that he would need someone to bail him out. He further advised that while he was born in Country A, he grew up in Country B, and that if he was sent to jail in Country A, his mother would have to come back to Country A to help him, and would possibly get into trouble herself. He stated that if he was going to be returned he would rather go to Country B.

Mr X further advised that his complaint with the UNCAT remained ongoing. He stated that he had difficulty getting enough access to computers so that he could follow up on his legal concerns and that he believed that the Serco officers treated him differently than some of the bigger detainees.

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 restricted detention for more than three years. He has no matters before the department, the courts or tribunals and has been referred for involuntary removal.

The Ombudsman's previous report (1002370-O), tabled in Parliament on 1 March 2017, recommended that Mr X be considered under s 195A of the *Migration Act 1958* for the grant of a bridging visa while his complaint with the UNCAT is finalised.

The Minister stated that Mr X is on a removal pathway and the department does not consider referral for a bridging visa as being appropriate.

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. In light of the length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Ombudsman again recommends that Mr X be considered under s 195A for the grant of a bridging visa or be considered for transfer to Villawood IDC so that he can receive support from his uncle while his removal is progressed.