

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 a cumulative period of more than 60 months (five years). The previous assessment 1001253-O was tabled in Parliament on 21 June 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	1978
Ombudsman ID	1001253-O1
Date of department's reports	20 June 2017 and 18 December 2017
Total days in detention	1,822 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
2 February 2017	Transferred to Villawood IDC.
5 September 2017	Transferred to Christmas Island IDC.

Recent visa applications/case progression

18 April 2017	The Administrative Appeals Tribunal (AAT) remitted Mr X's case to the Department for Home Affairs (the department) for reconsideration with the direction that Mr X's case satisfies the complementary criterion under s 36(2)(aa) of the <i>Migration Act 1958</i> .
29 May 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa. On 20 June 2017 the department advised that this referral was withdrawn and that Mr X would not be considered for a bridging visa while his case was being considered under s 501.
11 October 2017	Applied to the Federal Circuit Court for judicial review of the time taken to determine the outcome of his Temporary Protection visa (TPV) application. Mr X withdrew his application for judicial review on 22 November 2017.
26 October 2017	Issued with a Notice of Intention to Consider Refusal (NOICR) of his TPV under s 501. The matter remained ongoing at the time of the department's latest report.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X attended specialist counselling and was prescribed with antidepressant medication for the management of complex mental health concerns, including post-traumatic stress disorder (PTSD), an adjustment disorder, a depressive disorder and a history of torture and trauma.

In April 2017 a treating psychologist reported that Mr X presented with symptoms of anxiety, depression and PTSD related to his past experiences of torture in his home country as well as his separation from his family while in immigration detention and the uncertainty of his future. IHMS reported that Mr X's mental health had deteriorated over the past four years and that his symptoms of trauma were exacerbated by his perceived lack of safety and fear surrounding the possibility of being returned to Country A. IHMS advised that this possibility has caused Mr X significant distress and that he would prefer to remain in immigration detention for an indefinite period and be separated from his family which deeply saddened him, rather than be returned. IHMS further advised that a psychologist reported that Mr X's mental health would improve if he was transferred to a less restrictive environment. In September 2017 he presented to the mental health team with ongoing sleeping difficulties due to worry for his family overseas.

IHMS further advised that Mr X continued to be monitored by a general practitioner and receive ongoing treatment for type 2 diabetes, high cholesterol and rheumatic fever.

22 November 2017

An Incident Report recorded that Mr X refused food and fluid.

Ombudsman assessment

Mr X was detained on 18 May 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than five years.

The Ombudsman's previous assessment recommended that Mr X be considered again for a bridging visa or community placement in light of the length of time he has remained in an immigration detention facility and his ongoing mental health concerns.

On 21 June 2017 the Minister advised that the department was considering Mr X's case for referral to him under s 195A for the possible grant of a bridging visa.

On 8 September 2016 Mr X's TPV application was refused. On 18 April 2017 the AAT remitted Mr X's case to the department for reconsideration with the direction that Mr X's case satisfies the complementary criterion under s 36(2)(aa).

On 26 October 2017 Mr X was issued with a NOICR of his TPV under s 501.

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 required ongoing treatment for complex mental health concerns, including PTSD, an adjustment disorder, a depressive disorder and a history of torture and trauma related to experiences in his home country. A treating psychologist reported that Mr X's mental health had deteriorated over the past four years and that his condition would improve if he was transferred to a less restrictive environment.

The Ombudsman further notes the department's advice that Mr X would not be considered for a bridging visa while his case was being considered under s 501.