

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fourth s 486O assessment on Mr X who has remained in immigration detention for more than 60 months (five years).

The first assessment 1001527 was tabled in Parliament on 22 October 2014, the second assessment 1001999 was tabled in Parliament on 14 October 2015 and the third assessment 1000964-O was tabled in Parliament on 15 February 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1982
<b>Ombudsman ID</b>	1000964-O1
<b>Date of DIBP's reviews</b>	2 November 2016 and 4 May 2017
<b>Total days in detention</b>	1,822 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1000964-O), Mr X remained at Wickham Point Alternative Place of Detention.	
16 June 2016	Transferred to Yongah Hill Immigration Detention Centre (IDC).
2 February 2017	Transferred to Villawood IDC.

### Recent visa applications/case progression

23 June 2016	The Department of Immigration and Border Protection (the department) recommended that although Mr X's case did not meet the guidelines under s 195A of the <i>Migration Act 1958</i> , his case should be referred to the Minister for consideration under ss 195A or 197AB for the grant of a bridging visa or community detention placement.
18 August 2016	Temporary Protection visa (TPV) application refused. The department advised that the unintentional release of personal information <sup>1</sup> was taken into account when considering his protection claims.
1 September 2016	Found to meet the guidelines for referral to the Minister under s 195A.
8 September 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review. Mr X was scheduled to attend hearings on 9 May 2017 and 10 May 2017.
21 September 2016	Mr X's case was referred to the Minister under s 195A. On 26 October 2016 the Minister indicated that he was not inclined to consider Mr X's case under ss 195A or 197AB.

<sup>1</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

4 May 2017	The department advised that Mr X was no longer considered a person of interest to an external agency.
26 July 2017	The department advised that Mr X was no longer considered a person of interest to the department.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X did not require treatment for any major physical or mental health issues during this assessment period.

### Other matters

24 May 2016	The Australian Human Rights Commission (AHRC) provided the department with a preliminary view in relation to Mr X's complaint. The department and Minister provided a response.
9 December 2016	The AHRC provided the department with a revised preliminary view and the department and Minister provided a response. On 11 April 2017 the AHRC requested further information and the department and Minister provided a further response. The matter remained ongoing at the time of the department's latest review.

### Information provided by Mr X

During a telephone conversation with Ombudsman staff on 25 July 2017 Mr X advised that he had appealed the department's decision to refuse his TPV application at the AAT and was scheduled to attend hearings in October 2017. He said that he was receiving legal assistance and only spoke with his case manager when new information was available.

Mr X advised that he was previously convicted of smuggling one person into Australia after he provided a woman with a telephone number for a people smuggler. He stressed that he did not benefit from the transaction and does not believe this should constitute people smuggling, as he was only trying to help. He said he felt the jury at his trial did not understand his case and his Legal Aid lawyer did not properly advise him.

Mr X advised that he had intended to appeal the conviction, but could not afford legal assistance and his case manager told him that if he appealed, his TPV application would be placed on hold. Mr X reported that the AHRC was currently investigating this matter and had written to the Minister.

Mr X reported that his mental health has deteriorated in restricted detention and he often feels upset. He said he constantly worries about his family and no longer attends counselling with IHMS as it is repetitive and reminds him of his worries. He said that he has not been involved in any behavioural incidents in detention and does not understand why he has not been released on a bridging visa.

### **Ombudsman assessment/recommendation**

Mr X was detained on 7 May 2012 after arriving in Australia by sea and has been held in an immigration detention facility for more than five years.

Mr X's TPV application was refused on 18 August 2016. At the time of the department's latest review he was awaiting the outcome of merits review.

The Ombudsman notes that Mr X is no longer considered a person of interest to an external agency or the department.

The Ombudsman's previous assessment (1000964-O) recommended that consideration be given to granting Mr X a bridging visa or community detention placement while he awaited the outcome of his TPV application.

On 15 February 2017 the Minister noted the recommendation and advised that he had recently considered Mr X's case under ss 195A and 197AB for a bridging visa or community detention placement and declined to intervene.

The Ombudsman again 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 significant length of time Mr X has remained in detention and the absence of any behavioural or security concerns, the Ombudsman recommends that Mr X's case is considered under s 195A for the grant of a bridging visa.