

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the sixth s 486O assessment on Mr X who has remained in immigration detention for more than 90 months (seven and a half years). The previous assessment 1000023-O was tabled in Parliament on 1 March 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	1986
Ombudsman ID	1000023-O1
Date of DIBP's reports	3 March 2017 and 22 August 2017
Total days in detention	2,732 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Villawood Immigration Detention Centre (IDC).	
30 June 2017	Transferred to Facility B.

Recent visa applications/case progression

10 March 2017	The Federal Circuit Court (FCC) set aside Mr X's negative International Treaties Obligations Assessment (ITOA) outcome and remitted the matter to the Department of Immigration and Border Protection (the department) for reconsideration.
16 March 2017	Found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.
12 May 2017	Found to meet the guidelines for referral to the Minister under s 195A.
15 May 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A.
28 June 2017	The Minister declined to consider Mr X's case under s 195A.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment for depression, insomnia and a history of torture and trauma. Mr X was referred for specialist counselling in August 2016 after presenting with poor sleep and low appetite related to his prolonged detention. In November 2016 a psychologist noted that Mr X presented with symptoms of post-traumatic stress disorder (PTSD) and reported that the uncertainty of his immigration detention was a constant reminder of previous traumatic events. The psychologist further noted that the stress of detention may exacerbate Mr X's already distressing psychological symptoms and advised that he would benefit from treatment in an environment he perceives to be safe. In April 2017 a psychiatrist reported that they were concerned about Mr X's mental health after he presented with low mood, anxiousness and helplessness related to his prolonged detention and recommended he be placed in the community to prevent further deterioration. IHMS noted that Mr X's weekly visits from his wife were a protective factor.

IHMS further advised that Mr X was provided with treatment for a knee injury and underwent investigative testing.

Other matters

Mid 2017	The United Nations Human Rights Council's Working Group on Arbitrary Detention published an opinion related to Mr X's case. The opinion stated that Mr X's detention was arbitrary and in breach of the <i>Universal Declaration of Human Rights</i> and the <i>International Covenant on Civil and Political Rights</i> .
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Information provided by Mr X

During an interview with Ombudsman staff in November 2017 Mr X advised that he won his case at the FCC in March 2017 and has been waiting for the Minister to respond for more than eight months. Mr X explained that his case manager said that the Minister may decide to lift the bar and allow him to apply for a temporary protection visa.

Mr X reported that he was separated from his wife, who resides in Sydney, when he was transferred from Villawood IDC to Facility B in June 2017. He said that he lodged a request to be returned to Villawood IDC a couple of months ago, but had not received a response. He advised that the separation has been very difficult and stressful for both of them and he is deeply concerned about his wife's mental health.

Mr X stated that he has spent more than eight years in an immigration detention facility and feels isolated and trapped. He said that his memory is fading and he is unable to participate in activities because he finds it difficult to focus and concentrate. He also advised that he takes medication for depression and sleep concerns as he experiences nightmares. He explained that his condition improves during psychological counselling sessions, but his mood deteriorates once he returns to immigration detention.

Mr X reported that his lawyer wrote to the United Nation's (UN) last year and he believed that the UN had since written a report about his immigration case. He said that the report had been sent to the Minister and he was waiting for an update from his lawyer.

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 an immigration detention facility for more than seven and a half years. At the time of the department's latest review, he was awaiting the outcome of the department's reconsideration of his ITOA.

The Ombudsman's previous assessment recommended that consideration be given to granting Mr X a bridging visa or community placement while he awaits the resolution of his immigration case in light of ongoing mental health concerns.

On 1 March 2017 the Minister advised that the department was reviewing Mr X's case for possible referral to him for consideration under s 195A for the grant of a bridging visa.

On 15 May 2017 Mr X's case was referred to the Minister for consideration under s 195A and on 28 June 2017 the Minister declined to consider his case.

The Ombudsman notes the government's duty of care to immigration detainees and the serious risk to mental and physical health that prolonged immigration detention may pose. IHMS has advised that Mr X continues to receive treatment for multiple mental health concerns, including depression and PTSD, related to his prolonged detention. In April 2017 a psychiatrist reported that they were concerned about Mr X's mental health after he presented with low mood, anxiousness and helplessness related to his prolonged detention and recommended that he be placed in the community to prevent further deterioration.

The Ombudsman further notes Mr X's advice that he applied to be transferred back to Villawood IDC so that he can reside closer to his wife.

1. In light of the significant length of time Mr X has remained in an immigration detention facility and his ongoing mental health concerns, the Ombudsman recommends that his case be referred to the Minister under s 195A for the grant of a bridging visa while he awaits the resolution of his immigration pathway.
2. Should Mr X remain in an immigration detention facility, the Ombudsman recommends that he be transferred to Villawood IDC so that he can reside closer to his wife.