

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 a cumulative period of more than 42 months (three and a half years). The previous assessment 1002405-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	1987
Ombudsman ID	1002405-O1
Date of department's reports	15 May 2017 and 12 November 2017
Total days in detention	1,276 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Christmas Island Immigration Detention Centre (IDC).	
4 May 2017	Transferred to Yongah Hill IDC.
24 August 2017	Transferred to Christmas Island IDC.

Recent visa applications/case progression

25 January 2017	The Minister declined to intervene under s 195A of the <i>Migration Act 1958</i> to grant Mr X a bridging visa.
13 February 2017	The Department of Home Affairs (the department) finalised an International Treaties Obligations Assessment, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
3 March 2017	The department refused to revoke the decision to cancel Mr X's Protection visa under s 501.
29 May 2017	The Administrative Appeals Tribunal affirmed the decision.
23 June 2017	Applied to the Federal Court (FC) for judicial review. On 5 July 2017 the FC adjourned the matter to a date to be fixed following the determination of the High Court in another matter. ¹

Health and welfare

International Health and Medical Services (IHMS) advised that while Mr X declined antidepressant medication, he regularly engaged with psychologists for the management of depression, sleep disturbance, negative ruminations and symptoms of post-traumatic stress disorder (PTSD). A mental health assessment in February 2017 noted that Mr X was experiencing symptoms of detention fatigue and anxiety. He continued to be monitored by IHMS through cognitive behavioural therapy.

¹ *Falzon v Minister for Immigration and Border Protection* [2017] HCATrans 230.

21 November 2016	An Incident Report recorded that Mr X threatened self-harm after receiving negative news about his family.
2 December 2016	An Incident Report recorded that Mr X threatened self-harm during an interview.

Information provided by Mr X

During an interview with Ombudsman staff on 4 January 2018 Mr X advised that he was previously found to be a refugee but that his visa was cancelled under s 501. He applied to the FC for judicial review but his matter had been adjourned pending the determination of a similar case being heard in the High Court. He explained that he had been told that this case might bind his own case and he must wait for it be finalised. Mr X had been advised that the High Court was scheduled to hand down its judgment in March 2018. He explained that he did not have a lawyer to help him.

Mr X stated that it remains dangerous for him to return to his home country. He advised that he only has his mother in Country A. His younger brother had been stabbed in Country A and afterwards his mother sent him by boat to Country B for his safety. Mr X explained that everything is very hard for his mother, so he only speaks with her over the telephone from time to time, and has not told her that he is in immigration detention because he does not want to make her worry.

Mr X said that it was very difficult to explain his experiences in detention. He stated that he feels like he lost everything in his life, including his hopes, future and freedom. He feels hopeless because his situation in immigration detention seems indefinite. He feels like he has learned from his mistakes and just wants to be given another chance. Mr X advised that he did not find IHMS mental health counsellors helpful because they always asked him the same questions and just told him to have a more positive outlook. Mr X stated that he had requested IHMS to provide him with copies of his medical reports to have as supporting documents for his court case, but that IHMS had denied his request.

When asked about the conditions at Christmas Island IDC, he said that he feels like it is a prison in the middle of the ocean. However he stated that if he was transferred to a different facility, he would be constantly worried that he would be transferred back to Christmas Island IDC. Mr X stated that he had been placed in a good behaviour compound at the centre because he had no behavioural concerns or detention incidents. He was also able to go on excursions.

Ombudsman assessment

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in immigration detention for a cumulative period of more than three and a half years. At the time of the department's latest report Mr X was awaiting the outcome of judicial review.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to mental and physical health prolonged and apparently indefinite detention may pose.

IHMS has advised that Mr X continued to be monitored for multiple mental health concerns, including depression, PTSD, anxiety and a history of torture and trauma.

The Ombudsman further notes that in 2013 Mr X was convicted of assault, wounding and driving offences and that in July 2015 his Protection visa was cancelled under s 501.