

## 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 1000109-O was tabled in Parliament on 1 March 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>	1992
<b>Ombudsman ID</b>	1000109-O1
<b>Date of DIBP's reports</b>	23 January 2017 and 24 July 2017
<b>Total days in detention</b>	2,732 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
6 October 2016	Transferred to Facility C.

### Recent visa applications/case progression

14 January 2017	Mr X's case was identified for an assessment against the guidelines under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.  On 24 July 2017 the Department of Immigration and Border Protection (the department) advised that this assessment was on hold pending the conclusion of a complex identity investigation.
29 May 2017	Mr X's case was referred on a ministerial submission to lift the bar under s 48A to allow him to lodge a further temporary visa application.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X refused food and fluid as a form of protest from 11 July 2016 to 13 July 2016. He reported that the food provided in detention made him feel unwell and he required food with low salt and fat content. Mr X presented to the mental health team with frustration and low mood related to the available food and reported that he worries that his food may be tampered with. IHMS advised that as Mr X has no diagnosed food intolerances he is not eligible to receive a special diet.</p> <p>On 13 March 2017 Mr X presented with symptoms of depression, including sleep concerns, limited self-care and feelings of hopelessness, and attended weekly psychotherapy sessions. IHMS advised that improvements in his condition were reported in April 2017 and no further consultations were scheduled.</p> <p>IHMS further advised that Mr X was provided with treatment for physical health concerns, including shoulder pain. In September 2016 he was prescribed with medication to treat a stomach bacterial infection.</p>	
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### Recent detention incidents

March 2017	An Incident Report recorded that Mr X was allegedly assaulted by another detainee at Facility C.
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### Other matters

8 November 2016	The Australian Human Rights Commission advised that no further investigation of Mr X's complaint, lodged on 21 December 2015, was required and the matter was finalised.
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### Information provided by Mr X

During an interview with Ombudsman staff in October 2017 Mr X advised that the s 48A bar had been lifted and he was recently invited to apply for a Temporary Protection visa or a Safe Haven Enterprise visa. He said the department has been trying to confirm his citizenship and have now concluded that he is a citizen of Country B as he had spent a period of time there when he was younger. However, Mr X reported that Country B has already denied that he is a citizen and advised that he cannot be returned there.

Mr X advised that he was transferred to Facility C more than a year ago, separating him from his wife who lives in Sydney. He said that he is worried about his wife because she is stressed and cannot afford to visit him. He advised that he feels frustrated and hopeless in detention and believes the experience has permanently changed him.

Mr X stated the policies in detention are constantly changing and he believes it is unfair to apply the same rules to all detainees to prevent the bad behaviour of a few. He said that his wife recently sent him a device to allow him to listen to music in detention and help him relax, but once it arrived Serco officers said he was no longer able to have it. He advised that he complained to the Global Feedback Unit and has been told this is a new policy. He said that detainees are not told when the policies change and this is very frustrating.

Mr X also advised that the food provided in detention is poor and there are rarely any fresh vegetables or salads available. He said the food available often makes him feel unwell and he is no longer allowed to take vitamins to supplement his diet.

### **Ombudsman assessment/recommendation**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criteria and has been held in an immigration detention facility for more than seven and a half years.

The Ombudsman's previous assessment recommended that Mr X be considered for transfer to a detention centre in Sydney or, should that not be possible, to a detention centre in Melbourne in light of his ongoing mental health concerns.

On 1 March 2017 the Minister advised that the department has reviewed Mr X's placement and considers it appropriate and that his placement will continue to be reviewed.

On 14 January 2017 Mr X's case was identified for an assessment against the guidelines under s 195A for the grant of a bridging visa, however on 24 July 2017 the department advised that this assessment was on hold pending the conclusion of a complex identity investigation.

On 29 May 2017 Mr X's case was referred on a ministerial submission to lift the bar under s 48A to allow him to lodge a further temporary visa application.

The Ombudsman remains concerned that without the resolution of Mr X's identity investigation it is likely that his detention will remain protracted. The Ombudsman also remains seriously concerned about the risk that an indeterminate period of detention poses to Mr X's mental health and notes that he continued to receive treatment for symptoms of depression during this assessment period.

The Ombudsman also notes with concern that Mr X remained at Facility C during this assessment period, while his wife resides in Sydney. The Ombudsman's previous assessment noted that Mr X's psychiatrist recommendation that he be transferred to a detention centre in Sydney to be closer to his wife.

1. In light of the significant length of time Mr X has remained in detention and the absence of any security of behavioural concerns, the Ombudsman again recommends that Mr X be transferred to Villawood IDC or to an immigration detention facility in Melbourne so that he resides closer to his wife while he awaits the resolution of his immigration pathway.
2. In light of the protracted nature of Mr X's case, the Ombudsman recommends that the department prioritise the resolution of Mr X's identity investigation.