

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TBLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 78 months (six and a half years). The previous assessment 1000785-O was tabled in Parliament on 10 May 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	1953
Ombudsman ID	1000785-O1
Date of DIBP's reports	9 March 2017 and 7 September 2017
Total days in detention	2,368 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility C.	
13 May 2017	Transferred to Facility B.
2 June 2017	Transferred to Facility C.

Recent visa applications/case progression

22 November 2016	Refused to sign a request for voluntary removal from Australia and was subsequently referred for involuntary removal.
22 February 2017	The Australian Security Intelligence Organisation (ASIO) commenced review of Mr X's adverse security assessment. The Department of Immigration and Border Protection (the department) advised that the involuntary removal of Mr X was on hold pending the outcome of the review.
14 June 2017	ASIO issued Mr X with a qualified security assessment, which superseded his previous adverse security assessment.
7 September 2017	The department advised that it was preparing a ministerial submission under ss 46A and 48B of the <i>Migration Act 1958</i> for consideration to lift the application bars and allow Mr X to apply for a temporary visa.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X had previously engaged with specialist counselling for the management of a history of torture and trauma and an adjustment disorder with symptoms of depression and anxiety. A counsellor recorded in July 2016 that Mr X continued to struggle with grief, low mood, loneliness and concerns about his family. It was advised that Mr X was fragile and was having difficulty coping with his situation and symptoms of anxiety and depression. Following his transfer to and from Facility B, Mr X was re-referred for specialist counselling and was awaiting an appointment at the time of IHMS's report.

IHMS further advised that Mr X underwent a number of investigations and continued to be monitored for knee degeneration with associated pain and gastrological concerns. He was referred to an orthopaedic specialist for review of his knee concerns but was unable to attend the appointment in June 2017 due to his interstate transfer. At the time of IHMS's latest report he continued to await an appointment and attended regular physiotherapy.

Other matters

9 February 2017	<p>Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to health concerns at Facility C and requests for transfer to Facility B.</p> <p>The department advised in responses on 15 May 2017 and 22 August 2017 that Mr X's health concerns had been actioned or clarified and that transfer to Facility B would not be facilitated at that time due to capacity constraints.</p> <p>On 20 September 2017 the Ombudsman notified the department that the investigation had been finalised.</p>
9 March 2017	<p>The department advised that Mr X's complaint with the Australian Human Rights Commission, lodged on 7 March 2016, remained ongoing.</p>

Information provided by Mr X

During an interview with Ombudsman staff on 21 November 2017 Mr X advised that he did not understand why he remained in detention after being issued a qualified security assessment. He stated that he had made multiple requests to be transferred to Facility B so that his support network and family would be able to visit him frequently, but the requests had been denied. He further advised that he believed that the mental health support provided at Facility B was more effective for him.

He explained that the separation from his family and the length of time he has spent in detention is very stressful and that he often becomes very emotional. He stated that his situation sometimes felt so bad that he felt like he was a dead body. He stated that he had requested counselling with an external psychologist or psychiatrist but he had not yet had any appointments scheduled.

Mr X also explained that he had a number of physical health concerns including ongoing back and leg pain and a heart condition. He stated that he had previously had problems with the treatment he received at Facility C, but after he had complained about these issues to the Office the service from IHMS had significantly improved and he now attends weekly physiotherapy.

He also stated that he was concerned about how old he was getting and that he wanted to be able to spend the last few years of his life in the community. He explained that if his life was not at risk, he would rather return to Country A than continue to remain in immigration detention, but he believed he would be killed if he returned.

Ombudsman assessment/recommendation

Mr X has been found to engage Australia's *non-refoulement* obligations and has been held in an immigration detention facility for more than six and a half years.

Mr X is part of a cohort of detainees who have been found to engage Australia's *non-refoulement* obligations, but have been held in immigration detention for a significant period of time, due to previously being the subject of an adverse security assessment, and now as the subject of a qualified security assessment.

The Ombudsman's four previous assessments of Mr X's circumstances have articulated significant concerns about his ongoing and seemingly indefinite detention. In responses tabled on 12 February 2014, 8 November 2016 and 10 May 2017, the Minister advised that as a person with an adverse security assessment, Mr X would remain in held detention rather than live in the community.

On 14 June 2017 Mr X was issued a qualified security assessment, overturning his adverse security assessment.

Mr X's Protection visa application was initially refused on 29 November 2011. The department advised that following the grant of Mr X's qualified security assessment, it was preparing a ministerial submission under ss 46A and 48B for consideration to lift the application bars and allow Mr X to apply for a temporary visa.

The Ombudsman considers that it is likely to be some time before Mr X's immigration status is resolved and further notes his age and deteriorating physical and mental health. Accordingly, the Ombudsman does not consider Mr X's current detention placement to be appropriate.

1. In light of Mr X's protracted immigration pathway, the overturning of his adverse security assessment and the significant length of time he has remained in detention the Ombudsman recommends that the Minister urgently consider Mr X's case under s 195A and grant him a bridging visa.
2. The Ombudsman further recommends that the department brief the Minister on management options for the cohort of long-term detainees with qualified security assessments, and that the Minister prioritise finding a solution for this cohort that meets Australia's *non-refoulement* obligations without detaining these individuals indefinitely.

The Ombudsman considers that the ongoing long-term detention of this cohort of vulnerable individuals in increasingly hardened immigration detention facilities is inappropriate.

3. In the event that the Minister declines to grant Mr X a bridging visa, the Ombudsman recommends that the department transfer him to a lower security detention placement that is more appropriately tailored to accommodating vulnerable individuals facing prolonged immigration detention, such as a designated alternative place of detention in the community.

Mr X has requested to be transferred to Facility B on multiple occasions, and in the Ombudsman's previous assessment it was recommended that urgent consideration be given to transferring Mr X back to Facility B due to the protracted nature of his detention so that he would have access to his family and support network.

4. Until a more durable solution such as a designated alternative place of detention is found, the Ombudsman recommends that Mr X be transferred to Facility B to be closer to his family and support network.
5. The Ombudsman further recommends that IHMS expedite the referral of Mr X to an external psychologist or psychiatrist for mental health support to ensure that he has the opportunity to attend counselling as required.