

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 a cumulative period of more than 60 months (five years). The previous assessment 1001173-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	1992
Ombudsman ID	1001173-O1
Date of department's reports	7 May 2017 and 5 November 2017
Total days in detention	1,822 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility B.	
29 January 2017	Transferred to Facility C.

Recent visa applications/case progression

7 May 2017	The Department of Home Affairs (the department) advised that Mr X remains a person of interest to the department in relation to alleged offshore criminal matters.
22 May 2017	The department assessed Mr X as being of high risk to the Australian community and recommended that he remain in an immigration detention facility. As a result, Mr X is not being considered for ministerial intervention under ss 195A or 197AB of the <i>Migration Act 1958</i> for the grant of a bridging visa or community placement.
20 June 2017	Found not to meet the guidelines for referral to the Minister under ss 195A and 197AB.
17 July 2017	The Federal Circuit Court (FCC) found that Mr X's International Treaties Obligations Assessment (ITOA) decision was not made in accordance with the law because he had not been afforded procedural fairness. The department advised that it was considering the FCC's decision.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X sustained injuries after he was allegedly assaulted by other detainees in January 2017 at Facility B. Mr X was transferred to hospital the following day and underwent investigative testing and received pain relief medication. On 28 January 2017 a specialist reported that Mr X had sustained a fracture and he was commenced on antibiotic medication. He subsequently underwent reconstructive surgery in February 2017 and attended multiple follow-up reviews with a specialist and surgeon. Mr X also attended multiple reviews with an audiologist after reporting hearing loss related to his injuries. He was fitted with a hearing aid, however no improvements were noted. Mr X was awaiting an appointment with a specialist surgical clinic at the time of IHMS's latest report.</p> <p>IHMS further advised that Mr X received treatment for major depressive disorder, post-traumatic stress disorder (PTSD) and a history of torture and trauma. In January 2017 Mr X presented with stress and detention fatigue and was referred for specialist counselling. He was prescribed with sleeping medication in May 2017 and improvements in his condition were noted. In July 2017 a general practitioner (GP) recommended that he remain in a single room to help manage his sleep concerns. His condition continued to be monitored by the mental health team and a GP.</p>	
29 January 2017	IHMS advised that Mr X was closely monitored by detention centre staff after threatening self-harm.
6 June 2017	An Incident Report recorded that Mr X threatened self-harm.

Recent detention incidents

January 2017	An Incident Report recorded that Mr X was allegedly assaulted by three other detainees and requested that the matter be referred to police.
20 July 2017 – 23 September 2017	Incident Reports recorded that Mr X displayed abusive and aggressive behaviour towards staff and other detainees on three occasions.

Other matters

22 May 2017	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission. On 7 July 2017 the department provided a response. The matter remained ongoing at the time of the department's latest report.
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Ombudsman assessment

Mr X was detained on 7 October 2011 after being refused immigration clearance and has remained in an immigration detention facility for a cumulative period of more than five years.

On 17 July 2017 the FCC found that Mr X's ITOA was not made in accordance with the law because he had not been afforded procedural fairness. On 5 November 2017 the department advised that it was considering the FCC's decision.

The Ombudsman notes with concern the government's duty of care to detainees and the serious risk to physical and mental health prolonged immigration detention may pose. IHMS has advised that Mr X presented with stress and detention fatigue and received treatment for a major depressive disorder, PTSD and a history of torture and trauma. IHMS has also advised that Mr X received extensive treatment for head and facial injuries that he sustained when he was allegedly assaulted by three other detainees at Facility B.

The Ombudsman also notes that Mr X remains a person of interest to the department in relation to alleged offshore criminal matters. Further, on 22 May 2017 the department assessed Mr X as being of high risk to the Australian community and recommended that he remain in an immigration detention facility. As a result, the department advised that Mr X will not be considered for ministerial intervention under ss 195A or 197AB for the grant of a bridging visa or community placement.