

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABELING 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 1000030-O was tabled in Parliament on 14 June 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	1973
Ombudsman ID	1000030-O1
Date of DIBP's report	3 June 2017
Total days in detention	2,732 (at date of DIBP's report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X has remained at Facility B.

Recent visa applications/case progression

21 December 2016	<p>Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. This submission noted that Mr X had been assessed as being a low risk of harm to the Australian community using the Department of Immigration and Border Protection (the department)'s Community Protection Assessment Tool (CPAT).</p> <p>On 24 January 2017 consideration of the bridging visa submission was placed on hold pending finalisation of the assessment of Mr X's application for a Temporary Protection visa (TPV).</p>
24 July 2017	<p>Mr X's TPV application was refused. The delegate determined that Mr X is a refugee as defined by s 5H(1), but is ineligible for the grant of a TPV under s 5H(2) because there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity.</p>

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to attend regular counselling with the mental health team and a specialist counsellor for the management of anxiety, depression and a history of torture and trauma. He continued to experience anxiety and poor sleep, concentration and appetite. Mr X was reported to be despondent about the length of time he has remained in detention and the opportunities he has lost while he has been detained. He was prescribed with medication to assist with sleep, and antidepressants.

IHMS further advised that Mr X received podiatry services and underwent investigations for persistent chest pain and breathing difficulties, with no abnormalities identified. IHMS advised that his pain was possibly anxiety related, as he continued to report pain at times of increased stress. He also complained of ongoing chronic headaches and ringing in his ears and had been referred for review by an ear, nose and throat specialist.

IHMS's report dated 28 April 2017 advised that it had no documentation on file to indicate that Mr X's health was likely to be adversely affected by his current placement.

Other matters

9 June 2017	The Office of the Commonwealth Ombudsman opened an investigation into the circumstances of Mr X's ongoing held detention in light of his adverse security assessment being overturned. The Department provided responses on 5 July and 10 October 2017. The investigation remained ongoing at the time of reporting.
21 June 2017	During an interview with Ombudsman staff at Facility B, Mr X was observed to be highly distressed and anxious. Ombudsman staff raised concerns about Mr X's mental wellbeing with detention centre staff onsite. Both case management staff and IHMS personnel advised that they were already aware of Mr X's distressed and deteriorating mental state and were monitoring him closely to provide any required support.

Information provided by Mr X

During an interview with Ombudsman staff on 21 June 2017 Mr X advised that he was distressed about his life being wasted in detention. He desperately wants to get married and have a family, but he is 44 years old now and he worries that his life is slipping away from him. He said that he used to visit with families from Country A in the community, but he had stopped doing so because seeing their children always made him think about whether he would ever get the chance to have his own children, which upset him immensely.

Mr X stated that he was in his eighth year of detention and felt like he is going crazy. He said that he had been detained for so long now that if he is eventually released, he does not know how he will manage to survive or work in the community. He feels extremely anxious when he thinks about how he will cope, and he worries that he will not be able to remember how to do normal things, like walking down a road. He said that his anxiety about the future is taking over his whole life. For example, as a long-term detainee he has cooking privileges at Facility B, but he does not cook anymore because he is afraid of burning a dish or setting off the smoke alarm because he thinks that might cause problems for his immigration pathway.

Mr X advised that his health was deteriorating, and while previously he found medication and counselling helpful for managing his mental health, for the past three months he felt like the medication had not been working. He said he had stopped attending specialist counselling sessions because while speaking to his counsellor gave him hope, when he returned to detention it was too hard when that hope disappeared again. He said he felt like he was really struggling to cope. He cried in his sleep, had a ringing in his ears all the time, and had disengaged from participating in activities and speaking to his family. He said that sometimes he felt that it would be better to die than to continue living like this.

Information provided by Mr X's advocate

Mr X's advocate contacted the Ombudsman's office on 12 July 2017 to advise that a recent protection visa refusal for another detainee who formerly held an adverse security assessment had triggered extreme levels of distress in Mr X and the other two remaining long-term detainees from Country A at Facility B. She advised that she was very concerned about the deteriorating mental health of these detainees and said that in all of the years that she has been a pastoral visitor to these men, she has never observed their mental state to be so low.

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 seven and a half years.

The Ombudsman's five previous assessments of Mr X's circumstances have articulated significant concerns about his ongoing and seemingly indefinite detention. In responses tabled on 20 March 2013, 19 March 2014 and 31 August 2016, 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 28 November 2016 Mr X was issued a qualified security assessment, overturning his adverse security assessment.

The Ombudsman notes that the department has assessed Mr X through its CPAT as being a low risk of harm to the Australian community. 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 significant length of time he has remained in detention, his deteriorating mental health and the department's assessment that he does not pose a risk to the Australian community, the Ombudsman recommends that the Minister urgently consider Mr X's case under s 195A and grant him a bridging visa.

The Ombudsman is further concerned about the significant deterioration in Mr X's mental health which was noted in June 2017, despite an IHMS report dated two months earlier advising that his health was not adversely affected by his detention placement. The Ombudsman is further concerned about the marked deterioration in Mr X's mental health evidenced in IHMS reports over the seven and a half years he has spent in detention.

2. The Ombudsman is seriously concerned that IHMS has provided our Office with an inaccurate assessment of Mr X's health. The Ombudsman recommends that the department have IHMS review its processes to ensure that its reports are consistent and comprehensively assess the impact of detention placement on detainees' health.
3. The Ombudsman further recommends that the department have IHMS conduct an assessment of how Mr X's health has been affected by the duration of his immigration detention, and that this assessment be provided to the Minister for consideration along with the s 195A submission.

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.

Mr X's TPV application was refused on 24 July 2017. The Ombudsman notes with serious concern that if Mr X is not granted a bridging visa, it appears he will either be detained indefinitely, or returned to Country A in violation of Australia's obligations under international law.

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

5. 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.