

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X who has remained in restricted immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1987
<b>Ombudsman ID</b>	1002535-O
<b>Date of DIBP's reviews</b>	22 October 2016 and 23 April 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

19 February 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Christmas Island Immigration Detention Centre (IDC).
11 March 2012	Transferred to Curtin IDC.
30 August 2012	Granted a bridging visa and released from detention.
4 May 2015	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Maribyrnong IDC.
21 April 2016	Transferred to Facility B.

### Visa applications/case progression

24 April 2012	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
20 June 2012	Lodged a Protection visa application.
26 July 2012	Protection visa application refused.
30 July 2012	Applied to the Refugee Review Tribunal (RRT) for merits review.
8 January 2013	RRT affirmed original decision.
9 April 2013 – 7 January 2014	Found not to meet the guidelines for referral to the Minister under ss 417 or 48B.
10 June 2014	Bridging visa application found to be invalid.
18 June 2014	Applied to the Federal Circuit Court (FCC) for judicial review.
11 March 2016	FCC affirmed original decision.
22 October 2016	The Department of Immigration and Border Protection (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway.
29 November 2016	Mr X's case was assessed against the guidelines under s 197AB for possible inclusion on a ministerial submission. The department advised that Mr X's case was not referred to the Minister.

19 December 2016 and 21 February 2017	Found not to meet the guidelines for referral to the Minister under ss 48B and 195A.
18 April 2017	The department advised that Mr X had requested ministerial intervention under s 417, however this request was placed on hold pending the outcome of a paternity test taken by Mr X.
23 April 2017	The department advised that Mr X's involuntary removal is impacted by identity concerns and issues regarding the provision of visas to security escorts for involuntary removals to Country A.

#### **Other legal matters**

May 2015	A Family Violence Intervention Order (FVIO) was issued against Mr X following his involvement in an alleged incident of family violence.
August 2016	Mr X was convicted of exceeding the speed limit and fined \$236.20 including court costs.

#### **Health and welfare**

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and attended specialist counselling for the management of depression and a history of torture and trauma. IHMS further advised that one of Mr X's kidneys was removed in 2013 and he underwent investigative testing to monitor the functioning of his remaining kidney. Mr X also received treatment for hepatitis B and his condition was monitored by a general practitioner and renal specialist.	
19 February 2014	Incident Reports recorded that Mr X threatened self-harm.
25 October 2015	Incident Reports recorded that Mr X refused food and fluid.
8 November 2015	Incident Reports recorded that Mr X self-harmed.

#### **Other matters**

Mr X's wife and children were granted refugee status and currently reside in the community as permanent residents.
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### **Information provided by Mr X**

During an interview with Ombudsman staff at Facility B in June 2017 Mr X stated that he did not understand what was happening with his immigration case and was frustrated with the immigration system. He advised that the department was putting pressure on him to return voluntarily to Country A.

Mr X said that his current case manager made him feel uncomfortable and he did not think she cared about his case. He said that he had previously had no issues with his case managers. He advised that he was receiving legal assistance and had requested to be transferred to community detention, but the request was refused because he has mental health concerns and an FVIO was issued against him.

Mr X advised that his mental and physical health were deteriorating as a result of his detention and he had lost around 20 kilograms of weight since being re-detained. He advised that he often suffers from insomnia, headaches, hopelessness and disappointment and did not know if his specialist counsellor could help him. He said that he takes antidepressant medication and was concerned about the impact of the medication and his restricted detention on his physical health.

Mr X reported that he had not had any contact with his family for more than a year and did not receive visits from anyone else. He advised that he had not been on an excursion for 18 months and was unsure why they were not available to him.

### **Ombudsman assessment**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for a cumulative period of more than two and a half years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

The Ombudsman notes that at the time of the department's latest review Mr X's request for ministerial intervention under s 417 had been placed on hold pending the outcome of a paternity test taken by Mr X. The Ombudsman further notes advice from the department that Mr X's involuntary removal is impacted by identity concerns and issues relating to the provision of visas to security escorts of involuntary removals to Country A.

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. The Ombudsman further notes advice from IHMS that Mr X continued to attend regular specialist counselling for the management of mental health concerns. The Ombudsman makes no recommendations in this assessment.