

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 immigration detention for a cumulative period of more than 30 months (two and a half years).

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002687-O
Date of department's reports	29 May 2017 and 26 November 2017
Total days in detention	912 (at date of department's latest report)

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 Facility B.
21 February 2012	Transferred to Facility C.
11 March 2012	Transferred to Facility D.
30 August 2012	Granted a bridging visa and released from immigration detention.
8 December 2015	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility E.
16 February 2016	Transferred to Facility C.

Visa applications/case progression

24 April 2012	The Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.
18 June 2012	Lodged a Protection visa application.
9 October 2012	Protection visa application refused.
8 November 2012	Mr X was identified as a person of interest to the Department of Home Affairs (the department) and police in relation to alleged people smuggling activities.
14 January 2013	The Refugee Review Tribunal (RRT) affirmed the refusal of his Protection visa application.
10 February 2014	The Federal Circuit Court (FCC) affirmed the RRT's decision.
6 August 2014	The Full Federal Court affirmed the FCC's decision.
1 October 2014	Requested ministerial intervention under s 48B for the Minister to allow him to apply for a second Protection visa. On 21 May 2015 he was found not to meet the guidelines for referral to the Minister under s 48B.

18 August 2016	Mr X was no longer considered a person of interest to the department and police.
28 May 2017	The Minister declined to intervene under s 195A to grant Mr X a bridging visa.
29 May 2017	The department advised that Mr X has no matters before the department, the courts or tribunals. The department further advised that Mr X declined to return voluntarily to Country A, therefore it was considering alternative options to manage his detention placement.
26 November 2017	The department advised that the consideration of an alternative placement for Mr X was placed on hold pending the resolution of his criminal matters.

Other legal matters

July 2017	Incident Reports recorded that Mr X allegedly assaulted a Serco officer and the matter was referred to police. The department advised that Mr X was subsequently charged with offences relating to causing harm to a Commonwealth official. He was scheduled to attend a hearing in December 2017.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X has a history of torture and trauma and was referred to specialist counselling. IHMS further advised that Mr X received treatment for multiple physical health concerns including a migraine and multiple skin infections. He was prescribed with medication to treat his skin infections and his condition was monitored by a general practitioner.	
2 June 2012 – 22 November 2017	An Incident Report recorded that Mr X refused food and fluid on three occasions.

Detention incidents

4 June 2017	An Incident Report recorded that Mr X allegedly assaulted another detainee.
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Other matters

19 August 2016	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to the loss of personal property during his transfer from Facility E to Facility C. On 20 October 2016 the department provided a response and on 3 March 2017 the complaint was finalised.
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Ombudsman assessment

Mr X was detained on 19 February 2012 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two and a half years.

Mr X's Protection visa application was refused on 9 October 2012 and on 14 January 2012 the RRT affirmed the refusal.

The refusal of Mr X's Protection visa application was also affirmed by the FCC and FFC on 10 February 2014 and 6 August 2014 respectively.

The department has advised that Mr X has no matters before the department, the courts or tribunals.

The Ombudsman notes that as Mr X has declined to return voluntarily to Country A, his immigration pathway is likely to be protracted as involuntarily removal to Country A is not possible at present. The Ombudsman also 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.

On 29 May 2017 the department advised that it was considering alternative options to manage Mr X's detention placement. However, on 26 November 2017 the department advised that this consideration had been placed on hold pending the resolution of Mr X's criminal matters.