

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the second s 486O assessment on Mr X who has remained in immigration detention for more than three and a half years. The previous assessment 1002480-O was tabled in Parliament on 13 September 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1969
<b>Ombudsman ID</b>	1002480-O1
<b>Date of department's reports</b>	25 August 2017 and 22 February 2018
<b>Total days in detention</b>	1,276 (at date of department's latest report)

### Recent detention history

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

### Recent visa applications/case progression

March 2017	Found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.
December 2017	Applied to the Federal Court for reinstatement of the Full Federal Court (FFC) matter that was dismissed in March 2014. The matter was adjourned on multiple occasions and judgment was reserved in February 2018.
February 2018	The Department of Home Affairs (the department) advised that Mr X has been found to engage Australia's <i>non-refoulement</i> obligations, however, as a result of his criminal history he is excluded from protection under s 36 of the <i>Migration Act 1958</i> . The department advised that it continues to consider the resolution of Mr X's immigration status.

### Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and engaged with the mental health team for the management of multiple mental health concerns. Mr X expressed concern about maintaining his accommodation arrangements and a psychiatrist noted that due to Mr X's personality traits he was less likely to come into conflict with others if provided with his own space. The psychiatrist recommended that a referral be submitted to Serco that Mr X's needs be considered when considering any future placement allocations.

IHMS further advised that Mr X received treatment for multiple physical health concerns. He was prescribed with medication and continued to be monitored by a general practitioner as required.

## Ombudsman assessment

Mr X has been found to engage Australia's *non-refoulement* obligations, however as a result of his criminal history he is excluded from protection under s 36 of the *Migration Act 1958*. He has remained in an immigration detention facility for more than three and a half years.

The Ombudsman's previous assessment recommended that in light of the protracted and complex nature of Mr X's immigration pathway, his case be referred to the Minister under s 195A for consideration of the grant of a bridging visa, while he awaits the resolution of his immigration status. The Ombudsman further strongly recommended that priority be given to the resolution of Mr X's immigration status.

On 13 September 2017 the Minister advised that Mr X had been found not to meet the guidelines under s 195A for the grant of bridging visa and had not been referred to him for consideration. The Minister further advised that the department continued to consider Mr X's immigration status.

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 advised that Mr X received treatment for multiple mental health concerns and a psychiatrist noted that due to Mr X's personality traits he was less likely to come into conflict with others if provided with his own space. The psychiatrist further recommended that a referral be submitted to Serco that Mr X's needs be considered when considering any future placement allocations.

At the time of the department's latest report Mr X was awaiting the outcome of an application for the reinstatement of a FFC matter.