

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING 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 1000267-O was tabled in Parliament on 10 May 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	1983
Ombudsman ID	1000267-O1
Date of DIBP's reports	13 March 2017 and 11 September 2017
Total days in detention	2,732 (at date of DIBP's latest 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	Mr X was issued with a qualified security assessment by the Australian Security Intelligence Organisation, superseding his previous adverse security assessment.
13 March 2017	<p>The Department of Immigration and Border Protection (the department) advised that it had begun to explore alternative placement options for Mr X following his issue of a qualified security assessment and that appropriate support arrangements were being identified to accommodate his significant mental, physical and behavioural concerns, before referring him to the Minister for consideration.</p> <p>The department further advised that processing of Mr X's Temporary Protection visa (TPV) application remained ongoing.</p>
7 July 2017	The department provided further information, advising that due to Mr X's traumatic past and complex health concerns, it had decided not to interview him again in relation to his TPV application, but to assess his protection claims by analysing his previous written claims and directing further questions to his migration agent.
11 September 2017	<p>The department advised that Mr X's current detention placement was considered appropriate as it had been reviewed, with no alternative recommended.</p> <p>The department again advised that assessment of Mr X's TPV application was ongoing.</p>

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has been diagnosed with multiple significant mental health conditions including depression, situational anxiety, schizophrenia and an acquired brain injury. His psychiatrist stated that Mr X was devastated and angry about his prolonged detention and strongly recommended that he be released into the community with appropriate support, for the benefit of his mental health. Mr X received ongoing support from the IHMS mental health team and attended regular specialist counselling sessions, but he continued to decline medication for his mental health conditions.</p> <p>In May 2017 Mr X was assessed by a neuropsychologist who strongly recommended that he be released into a supported housing placement in the community. The neuropsychologist noted that Mr X would require care from support staff due to his limited social engagement and poor problem solving skills and would likely require a Community Treatment Order to maintain his mental health in the community.</p> <p>IHMS further advised that Mr X continued to receive treatment and medication for the management of hypothyroidism and type 2 diabetes. He attended multiple specialist reviews for a congenital eye condition and in December 2016 his vision was assessed to have deteriorated to a level that would qualify for legal blindness.</p>	
12 September 2016 – 19 December 2016	Incident Reports recorded that Mr X threatened self-harm on seven occasions.
19 July 2017	An Incident Report recorded that Mr X threatened self-harm.

Recent detention incidents

<p>Incident Reports recorded that Mr X was involved in a number of minor behavioural incidents during this reporting period including causing minor damage to property and behaving disruptively.</p>	
5 August 2017	An Incident Report recorded that Mr X was the victim of a minor assault by another detainee. He was provided with medical assistance and he attempted to contact police to report the incident himself. No further information was provided.

Other matters

30 September 2016	The Australian Human Rights Commission (AHRC) notified the department that the complaint lodged by Mr X on 5 August 2016 had been closed.
3 February 2017	The department received a notice from the AHRC in relation to a complaint lodged by Mr X, advising that the AHRC considered the department's actions in respect of Mr X to be inconsistent with his human rights.
22 May 2017	The department was notified that Mr X had lodged another complaint with the AHRC. On 29 May 2017 the department provided a response. The matter remained ongoing at the time of the department's latest report.

2 June 2017	<p>The Office of the Commonwealth Ombudsman (the Office) 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 a response on 7 July 2017.</p> <p>On 20 October 2017 the complaint was finalised, with comments provided to the department about the unduly long delay in identifying an appropriate placement for Mr X in the community, noting that it had been three years since the department first identified that held detention was not an appropriate environment for him.</p>
8 September 2017	<p>Mr X lodged a complaint with the Office in relation to the confiscation of items of his property including a mobile phone. On 18 October 2017 the department provided a response advising that the confiscation of the property was the result of the items not being declared and therefore being unpermitted. The investigation remained ongoing at the time of reporting.</p>
5 October 2017	<p>Mr X lodged a further complaint with the Office in relation to concerns regarding being monitored by detention centre staff. The investigation remained ongoing at the time of reporting.</p>

Information provided by Mr X

During interviews with Ombudsman staff on 6 and 28 September 2017 Mr X stated that he feels very sad and isolated in detention. He said he struggles to connect with other detainees at the centre because they do not speak his language and he is afraid of many of them. He does not participate in programs or activities at the centre, instead he spends his time exercising by himself, reading books, writing poetry about his past and watching the news which helps him to learn English.

He said that he receives visitors from a community group twice a week and his brother visits occasionally, but he still feels very isolated. He is not allowed to have a mobile phone anymore and this makes it hard for him to contact his mother in Country A, as his vision issues make it difficult to use the prepaid phone cards on the payphone.

Mr X advised that he does not feel safe in detention. He claimed he had recently been assaulted and harassed by two other detainees. He said he attempted to complain to the police about these incidents, but that the detainees were still in the same compound as him and he is terribly scared of being assaulted again. He is also scared of his own reaction to aggression from other detainees, and the possibility that he will respond by getting into a fight with his attacker.

He said that his ongoing detention feels like a psychological punishment. He feels like there is no light at the end of the tunnel for him and his health is getting worse and worse. He worries he has wasted his youth in detention and has missed out on so much in life. He regrets that he has never had the opportunity to start a life or have a family.

Mr X said that he feels deeply traumatised by the things he experienced during the war in Country A. Those experiences combined with his difficult journey to Australia and now his indefinite detention have damaged his mental health irreparably. He wakes up every day feeling like his life is in limbo and he has no hope. He said he does not understand why he remains in detention when all of the other detainees from Country A with overturned adverse security assessments have been released from Facility B.

During the interview Mr X provided Ombudsman staff with a copy of a psychological assessment report produced by a specialist counselling service on 21 June 2017. The assessment advised that Mr X's mental health remains fragile and that detention is a trigger for his mental health symptoms. It further stated that his physical and psychological health concerns have intensified because of his detention placement and he is very distressed.

Ombudsman assessment/recommendation

Mr X has been found to engage Australia's *non-refoulement* obligations and has remained 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 25 February 2015 and 2 March 2016 the Minister advised that the department was exploring appropriate mental health support and accommodation options for Mr X.

On 15 September 2014 the department advised that in consultation with IHMS, it had assessed that Mr X's ongoing held immigration detention was not conducive to his mental health and that it was working to find an alternative placement for him. Since that time Mr X's treating mental health professionals have repeatedly advised that ongoing held detention is having a detrimental impact on his mental health and recommended he be transferred to a supported placement in the community.

The Ombudsman notes with significant concern that in its report dated 11 September 2017, the department advised that a neuropsychologist had strongly recommended that Mr X be released into a supported placement in the community, yet simultaneously advised that his placement had been reviewed and was considered appropriate.

1. The Ombudsman recommends that the department conduct a new assessment of the appropriateness of Mr X's detention placement that takes into consideration the reports prepared by a neuropsychologist in May 2017 and a specialist counsellor in June 2017.

The Ombudsman is further concerned that IHMS recorded in its report on 26 February 2017 that a psychiatrist recommended that Mr X be released into the community with appropriate support, but in the same report IHMS advised that there had been no specialist documentation to indicate Mr X's health conditions or issues are likely to be adversely affected by his current placement.

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.

Considering the consistent recommendations of Mr X's mental health practitioners and his issuance with a qualified security assessment, the Ombudsman does not consider Mr X's current detention placement to be appropriate.

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. Mr X was initially detained as the subject of an adverse security assessment, and is now detained as the subject of a qualified security assessment. Assessment of Mr X's TPV application remains ongoing, and is likely to be protracted due to his complex health conditions.

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

3. In light of Mr X's protracted immigration pathway, the significant length of time he has remained in detention and his significant mental and physical health concerns, the Ombudsman recommends that the Minister urgently transfer him to a lower security detention placement that is appropriately tailored to accommodating vulnerable individuals facing prolonged immigration detention and provides him with sufficient support for his mental health needs, such as a designated alternative place of detention in the community.