

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the fifth s 486O assessment on Mr X who has remained in immigration detention for more than 78 months (six and a half years). The previous reports are:

1000777 tabled in Parliament on 13 November 2013

1001252 tabled in Parliament on 27 August 2014

1001922 tabled in Parliament on 17 June 2015

1002392 tabled in Parliament on 14 September 2016.

This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1985
Ombudsman ID	1000653-O
Date of DIBP's reviews	3 October 2016 and 3 April 2017
Total days in detention	2,368 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1002392), Mr X has remained in community detention.
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Recent visa applications/case progression

7 June 2016	The Minister appealed the Full Federal Court decision and the High Court (HC) found that the International Treaties Obligations Assessment process was not procedurally unfair. ¹ The Department of Immigration and Border (the department) advised that it is considering the implications of this judgment.
9 September 2016	Mr X's case was referred on a ministerial submission under s 46A of the <i>Migration Act 1958</i> for consideration to lift the bar.
3 April 2017	The department advised that Mr X was referred to the International Organization for Migration after indicating an interest in voluntarily returning to Country A. However the department further advised that Mr X was undergoing an assessment to determine his capacity to make decisions regarding his immigration pathway.

¹ *Minister for Immigration and Border Protection v SZSSJ* [2016] HCA 29.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X received treatment for significant mental health concerns including schizophrenia, anxiety, depression, an adjustment disorder and post-traumatic stress disorder (PTSD). Mr X's mental health conditions are complicated by an acquired brain injury and possible borderline IQ as well as substance misuse and non-compliance with medication resulting in episodes of psychosis, self-harm and suicide attempts. Mr X was referred to a specialist in relation to his substance abuse. In February 2017 he was placed on Oral Replacement Therapy and referred for drug and alcohol counselling.

Mr X was admitted to a hospital mental health unit on 13 July 2016 after presenting with wounds following an episode of self-harm. He was recommenced on anti-psychotic medication and released after his mental health stabilised. He was involuntarily admitted to psychiatric facilities on two further occasions in October 2016 and January 2017, where he was recommenced on antipsychotic medication. In February 2017 he was placed on a community treatment order following his discharge from hospital. Mr X's mental health conditions required ongoing psychological support from a community mental health team, psychiatrist and general practitioner.

IHMS advised that in February 2016 Mr X requested relocation to community detention in Queensland to be closer to a family friend. His psychiatrist and social worker advised that he remains vulnerable to social isolation in his current community detention placement in Victoria and that relocation to Queensland would greatly benefit his psychological condition.

IHMS further advised that Mr X underwent orthopaedic surgery and was prescribed with pain relief medication for associated joint pain. He received ongoing treatment for a blood disorder and asthma and continued to be monitored for an acquired brain injury.

13 July 2016	Admitted to a mental health unit following an episode of self-harm.
7 October 2016	An Incident Report recorded that Mr X self-harmed. That same day he was involuntarily admitted to a psychiatric hospital.
12 – 30 January 2017	Involuntarily admitted to a psychiatric hospital.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in detention for more than six and a half years.

His case is affected by the HC judgment of 27 July 2016 and the department advised that it is considering the implications of this judgment. On 9 September 2016 his case was referred on a ministerial submission for consideration to lift the bar under s 46A.

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. The Ombudsman notes that Mr X has a number of complex mental health conditions and required a psychiatric assessment to determine his capacity to make decisions regarding his immigration pathway.

The Ombudsman notes the recommendation of Mr X's treating psychiatrist and support worker that his psychological condition would be greatly improved by being placed in community detention in Queensland where he has a support network.

In light of this, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration of an alternative community detention placement under s 197AD.