

## 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).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A, born in Country B
<b>Year of birth</b>	1990
<b>Ombudsman ID</b>	1002620-O
<b>Date of DIBP's reports</b>	10 March 2017 and 7 September 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

1 May 2013	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention, Christmas Island.
9 May 2013	Transferred to Christmas Island Immigration Detention Centre (IDC).
20 May 2013	Transferred to Curtin IDC.
12 July 2013	Granted a bridging visa and released from detention.
22 May 2015	Re-detained under s 189(1) following the cancellation of his bridging visa. He was transferred to Facility E.
14 July 2017	Transferred to a correctional facility.
20 July 2017	Transferred to Facility E.

### Visa applications/case progression

8 July 2013	Granted a bridging visa with an associated Humanitarian Stay (Temporary) visa.
5 August 2014	The Minister intervened under ss 91L and 46A to allow the Department of Immigration and Border Protection (the department) to grant Mr X a further bridging visa.
26 August 2014	Granted a further bridging visa valid until 26 August 2015.
22 May 2015	Bridging visa cancelled under s 116 following criminal charges.
26 May 2015	Applied to the Migration Review Tribunal (MRT) for merits review of the department's decision to cancel his bridging visa.
4 June 2015	MRT affirmed original decision.
29 September 2015	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application.
7 October 2015	Requested voluntary removal to Country A or Country B.
24 October 2015	Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a temporary visa application. He declined the offer on 23 February 2016.

30 November 2015	The State F Director of Public Prosecutions issued Mr X with a Criminal Justice Stay Certificate (CJSC).
10 December 2015	A delegate of the Minister declined to issue Mr X with a Criminal Justice Stay visa.
7 April 2016	The department invited Mr X to lodge a temporary visa application.
20 April 2016	Mr X informed the department that he does not wish to lodge a temporary visa application.
10 March 2017	The department advised that it is processing an application for a Country A travel document for Mr X.
9 June 2017	The department notified Mr X that the deadline for lodging a temporary visa application is 1 October 2017.
14 July 2017	The department notified Mr X that he is eligible to receive government funded support from a migration agent to assist him with lodging a temporary visa application. He accepted the offer on 4 August 2017 and was referred to a migration agent.
11 August 2017	Mr X's CJSC was cancelled.

#### **Criminal history**

14 July 2017	Convicted of offences relating to drugs and participating in a criminal group and sentenced to two years and nine months imprisonment. His sentence was considered to have commenced on 20 July 2015.
19 July 2017	Released from a correctional facility on parole and re-detained under s 189(1).

#### **Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of torture and trauma and attended specialist counselling from August 2016 to March 2017. A treating psychologist noted that he presented with symptoms of depression, post-traumatic stress disorder and anxiety related to his experiences in Australia and Country B and recommended that he be placed in the community as the immigration detention facility environment was a constant reminder of his traumatic experiences. On 14 July 2017 IHMS reported that Mr X had declined ongoing mental health support, including specialist counselling.</p>
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### **Information provided by Mr X**

During an interview with Ombudsman staff at Facility E in September 2017 Mr X advised that the department provided him with a lawyer around six weeks ago and he was currently completing his protection visa application. He said he was confused about the visa application process and had believed that refugees were not permitted to apply for a visa and had to wait to be considered by the Minister.

Mr X advised that his family reside in Country C and he speaks with them every few weeks. He also advised that his partner is from Country D and visits him weekly as she resides in Sydney.

Mr X explained that his nationality is complicated because although he was born in Country B, his father is from Country C and his grandfather was born in Country A. He stated that he lost his passport during the war and had to travel to Australia on a false passport. He advised that he wished to apply for a new passport so he could move to Country D with his partner, but the department would not allow this. He said he felt pressured to request removal to Country A, but he cannot go there due to safety concerns. Additionally, he would have no family support and does not speak the language.

Mr X said he is stressed and worried about his immigration case and struggles to sleep. He advised that the detention centre environment reminds him of past traumatic experiences in Country B and that while he attended specialist counselling, he does not believe it has helped. He advised that his sleep has improved since he was placed in a single room.

### **Ombudsman assessment/recommendation**

Mr X was detained on 1 May 2013 after arriving in Australia by sea and has been held in an immigration detention facility for a cumulative period of more than two and a half years.

On 29 September 2015 the Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application and on 4 August 2017 Mr X accepted the offer to receive government funded support from a migration agent to assist him with lodging a temporary visa application.

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 with serious concern that Mr X's treating psychologist recommended he be placed in the community as the immigration detention facility environment was a constant reminder of past traumatic experiences.

The Ombudsman further notes that Mr X has been convicted of offences relating to drugs and participating in a criminal group and was sentenced to two years and nine months imprisonment.

In light of this advice, the Ombudsman recommends that consideration be given to placing Mr X in a less restrictive compound at Facility E.