

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 36 months (three years). The previous assessment was tabled in Parliament on 14 June 2017. This assessment provides an update and should be read in conjunction with the previous assessment.

Name	Mr X
Citizenship	Country A
Year of birth	1988
Ombudsman ID	1002420-O1
Date of DIBP's report	26 May 2017
Total days in detention	1,094 (at date of DIBP's report)

Recent detention history

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

Recent visa applications/case progression

7 February 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.
16 March 2017	The Minister declined to intervene under s 195A.
26 May 2017	The Department of Immigration and Border Protection (the department) advised that as Mr X has no matters before the department, the courts or tribunals, he is on a removal pathway.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for chronic back pain and a degenerative medical condition. He underwent surgery in January 2017 and attended a follow-up review with a specialist surgeon in March 2017. He was unable to participate in activities or play sport due to his condition and was referred to an external organisation for support. Mr X also underwent a magnetic resonance imaging scan after presenting with ongoing back pain and was awaiting a physiotherapy appointment at the time of IHMS's latest report.</p> <p>IHMS further advised that Mr X attended specialist counselling for multiple mental health concerns, including anxiety, a history of torture and trauma, and situational stress related to his prolonged detention and constant worry about his physical health. IHMS advised that Mr X's mental health was fragile and likely to deteriorate further if he continued to remain in detention.</p>	
31 January 2017	Underwent surgery.
17 May 2017	An Incident Report recorded that Mr X was transported to hospital via ambulance after sustaining injuries from a fall.

Information provided by Mr X

During an interview with Ombudsman staff on 7 September 2017 Mr X advised that he has been in detention for three years and his medical condition makes being there a lot harder. Mr X’s doctor advised him that the condition is genetic, there is no available treatment and his condition will deteriorate. He advised that he finds it difficult to participate in activities and he does not find IHMS responsive to his medical needs. He stated that he had asked IHMS for a medical aid months ago but nothing had happened.

He advised that he feels constantly stressed and anxious being in detention. He stated that he does not speak to IHMS psychologists because they are not helpful but instead speaks to an external counsellor who helps him a lot. He stated that he had applied several times for a bridging visa or community placement because of his condition. He does not understand why his applications keep getting rejected.

Mr X advised that he last saw his case manager three months ago who told him many times that he must return to Country A but he does not want to return. He advised that his brother visits him every weekend but he has no contact with family or friends in his home country.

Other matters

7 September 2017	<p>During an interview with Ombudsman staff at Facility B Mr X stated that IHMS had not responded to his request for assistance and that he could not meaningfully participate in programs and activities due to his condition.</p> <p>Ombudsman staff raised concerns about Mr X’s medical needs with IHMS personnel on site who advised that they had ordered a medical aid for Mr X, which had recently arrived and would be provided to him later that week. IHMS personnel further advised that they were aware of Mr X’s degenerative condition but that it was relatively stable at the time.</p> <p>Ombudsman staff also raised concerns with detention centre staff on site about the programs and activities available for Mr X given his severe condition. Detention centre staff advised that they would discuss further options for Mr X with IHMS.</p>
The department advised that Mr X was married to Ms Y who resides in the community on a bridging visa.	

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 an immigration detention facility for more than three years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

The Ombudsman notes that Mr X's removal is likely to be protracted as involuntary removal to Country A is not possible at present.

The Ombudsman's previous assessment recommended that consideration be given for a community placement where Mr X would have the support of his wife, until removal action could be progressed.

On 14 June 2017 the Minister stated that he had recently considered Mr X's case under s 195A for the grant of a bridging visa and declined to intervene. The Minister advised that the department was assessing Mr X's case for referral to him under s 197AB for a community placement.

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.

1. In light of the length of time Mr X has remained in detention, the absence of any recent behavioural or security concerns, and the vulnerability associated with the serious nature of his condition, the Ombudsman recommends that Mr X's case be referred to the Minister for consideration under s 197AB for the grant of a community placement.
2. In the event that Mr X is not granted a community placement, the Ombudsman recommends that the department engage with associated service providers and IHMS and provide Mr X with opportunities to actively participate in programs and activities that accommodate his condition.