

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 assessments are:

1000881 tabled in Parliament on 19 March 2014

1001703 tabled in Parliament on 18 March 2015

1002547 tabled in Parliament on 3 February 2016

1000727-O tabled in Parliament on 15 February 2017.

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

Name	Mr X
Citizenship	Country A/Country B (dual citizenship), born in Country A
Year of birth	1966
Ombudsman ID	1000727-O1
Date of DIBP's reviews	22 November 2016 and 23 May 2017
Total days in detention	2,368 (at date of DIBP's latest review)

Recent detention history

Since the Ombudsman's previous assessment (1000727-O), Mr X remained at Wickham Point Alternative Place of Detention.	
30 June 2016	Transferred to Facility B.

Recent visa applications/case progression

23 May 2016	Mr X's case was referred on a ministerial submission for consideration under s 197AB of the <i>Migration Act 1958</i> for a community detention placement. On 23 June 2016 the Minister declined to intervene.
3 February 2017	The Federal Circuit Court found that Mr X's International Treaties Obligations Assessment was affected by an error of law. The Department of Immigration and Border Protection (the department) subsequently withdrew from proceedings and the matter was finalised.
12 April 2017	Mr X's case was referred on a ministerial submission for consideration under s 195A for the grant of a bridging visa.
23 May 2017	The department advised that it was considering options to assess Mr X's protection claims.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to attend counselling for a major depressive disorder, including symptoms of low mood, insomnia and rumination, as well as frustration relating to his immigration situation and detention conditions. In April 2017 he reported feelings of sadness, hopelessness and anxiety due to worries about his future and welfare. His condition continued to be monitored by the mental health team (MHT). IHMS further advised that Mr X continued to receive treatment for multiple physical health concerns including hypertension, high cholesterol and type 2 diabetes.	
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Information provided by Mr X

During an interview with Ombudsman staff at Facility B in June 2017 Mr X advised that his lawyer had ceased to act for him after his application for judicial review was finalised and he only saw his case manager occasionally. He said that he had been referred for a bridging visa but did not know the status of his application.

Mr X stated that his room at Facility B was very small and he had to share it with other detainees who he felt had poor personal hygiene. He said that he was unable to watch the news in detention because the television did not work and stated that the food provided at Facility B was unsuitable for him because of his diabetes.

Mr X said he was under a lot of stress in detention and cried every day. He advised that he continued to take medication to manage his physical health concerns but had ceased his antidepressant medication after experiencing side effects. He reported that he regularly engaged with the MHT which he found helpful in reducing his stress levels but was unsure if they were helpful in the long term.

Mr X advised that he remained in contact with friends he had met in detention, but he had not received visits since his transfer to Facility B.

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 six and a half years.

On 12 April 2017 Mr X's case was referred to the Minister for consideration under s 195A.

On 23 May 2017 the department advised that it was considering options to assess Mr X's protection claims.

The Ombudsman's previous assessment (1000727-O) recommended that the consideration of Mr X's case under s 197AB be expedited due to the length of time Mr X had spent in an immigration detention facility.

On 15 February 2017 the Minister advised that he had declined to intervene under s 197AB and that Mr X's case had recently been referred to him for consideration under s 195A.

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 the advice of IHMS that Mr X continued to receive treatment for multiple mental health concerns related to the uncertainty of his immigration status.

In light of the significant length of time Mr X has remained in an immigration detention facility, the Ombudsman recommends that the consideration of his case under s 195A be expedited.