

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X who has remained in immigration detention for more than 54 months (four and a half years). The previous assessment 1001613-O was tabled in Parliament on 7 February 2018. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1001613-O1
Date of department's report	14 December 2017
Total days in detention	1,640 (at date of departments report)

Recent detention history

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

Recent visa applications/case progression

27 March 2017	Applied to the Federal Court (FC) ¹ for judicial review of Federal Circuit Court's decision to affirm the Administrative Appeals Tribunal's decision to affirm the refusal of his Protection visa application.
1 May 2017	The FC adjourned.
17 October 2017	Issued with a Criminal Justice Stay Certificate.
18 October 2017	The Department of Home Affairs (the department) refused to grant Mr X a Criminal Justice Stay visa.
23 November 2017	Lodged a bridging visa application which was later deemed invalid.
14 December 2017	The department advised that Mr X remained the subject of an adverse security assessment.

¹ The department advised that it had previously incorrectly recorded in its 48-month report that Mr X had applied to the Full Federal Court for judicial review instead of the FC.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to receive treatment and engaged with the mental health team (MHT) for the management of an adjustment disorder, anxiety, major depression and insomnia. In August 2017 a treating psychologist reported that Mr X was worried and frustrated about his circumstances and expressed suicidal ideation. The psychologist recommended that Mr X's mental health be closely monitored as his emotional and psychological state was fragile. In September 2017 Mr X continued to express suicidal ideation, however he stated he had no plan due to his religious beliefs and was assessed to be at low risk of suicide. Mr X attended specialist torture and trauma counselling in June and August 2017 and continued to be monitored by a psychologist.

Mr X also continued to receive treatment for injuries he sustained when he was assaulted by a number of detainees in March 2017. Mr X presented with ongoing dizziness, neck pain and headaches and investigative testing confirmed that his fractured finger had not healed. In August 2017 Mr X disclosed to a psychologist further details of the assault. In September 2017 an IHMS psychologist reported that Mr X was experiencing symptoms of post-traumatic stress disorder (PTSD) related to the assault and seeing men similar to his alleged attackers in detention.

IHMS further advised that Mr X continued to receive treatment for the management of chronic back pain. In January 2017 he was reviewed by an orthopaedic spinal surgeon who noted that his symptoms could be managed with swimming, anti-inflammatory medication and a Transcutaneous Electrical Nerve Stimulation (TENS) machine.

On 1 November 2017 IHMS advised that Mr X's mental health was likely to be adversely affected by his current placement as a treating psychiatrist reported that Mr X's mental health had deteriorated due to his prolonged detention and uncertainty about his future. In November 2016 the psychiatrist recommended that he be placed in the community as his mental health concerns were due to his placement in an immigration detention facility.

3 November 2017

An Incident Report recorded that Mr X threatened to self-harm if he was transferred to a different compound at Facility B. He was reviewed by the MHT and placed on Psychological Support Program observations.

Other matters

14 December 2017

The department advised that Mr X's complaint with the Australian Human Rights Commission remained ongoing.

Information provided by Mr X

During an interview with Ombudsman staff in February 2018 Mr X advised that he applied to the FC for judicial review and was not aware of any progress on this application. He also advised that his adverse security assessment was being reviewed by the Inspector-General of Intelligence and Security and his lawyer had contacted the Independent Reviewer of Adverse Security Assessments. He said that he has not seen his case manager for five or six months and has not received any updates on his immigration case.

Mr X explained that he was charged with affray in March 2017 following an incident at Facility B. He said that a detainee was being assaulted by a group of detainees in the visits area and he intervened. He advised that the affray charge was later withdrawn and he pled guilty to common assault. He said that the court hearing was held in early 2018 and he was found guilty and received a two month good behaviour bond, with no conviction recorded.

Mr X advised that he suffers from back pain and his specialist had recommended that he use a TENS machine and do non-weight bearing exercises, such as swimming. He said that neither of these treatment options had been facilitated and he only receives pain relief medication.

Mr X reported that he sees the MHT and had been diagnosed with depression and obsessive compulsive disorder. He also said that he takes antidepressant and sleeping medication. He advised that he attended a counselling session with a specialist torture and trauma counsellor around five months ago and had found the session to be valuable. He said that he had advised IHMS that he would like to continue attending counselling, but he has not had another appointment.

Mr X disclosed further details about his assault by a group of detainees in March 2017 and is upset about the way the case was handled. He said that one offender was convicted and received a seven month good behaviour bond, however the other two offenders returned to their home countries without charge.

Mr X also advised that he has been transferred to a medium security compound at Facility B. He said that he preferred the higher security compound because he had his own room, but now he has to share a room. He reported that he gets along with his roommate, however he experiences nightmares and difficulty sleeping and this causes some tension.

Following the interview, Mr X provided Ombudsman staff with correspondence from a treating orthopaedic spine surgeon. On 18 January 2017 the surgeon recommended that Mr X's back condition could be managed with swimming on an intensive basis and TENS treatment. On 14 February 2018 the surgeon recommended that TENS treatment commence as soon as a provider could be identified.

Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and complementary protection criterion. He is the subject of an adverse security assessment and has remained in an immigration detention facility for more than four and a half years.

At the time of the department's report Mr X was awaiting the outcome of judicial review and outstanding criminal matters. In February 2018 Mr X advised that his criminal matters had been resolved with no conviction recorded.

The Ombudsman's previous assessment noted that Mr X suffered a serious assault while detained in Compound C at Facility B in March 2017, despite his psychiatrist raising concerns that his placement in this compound was inappropriate and his safety would be at risk. In light of these concerns, the Ombudsman recommended that the department ensure that it considers the individual vulnerabilities of detainees when making placement decisions and that the department explore options to provide Mr X with support to manage his psychological and physical health. The Ombudsman also strongly recommended that the government prioritise finding a durable solution for individuals with adverse security assessments.

On 7 February 2018 the Minister advised that Mr X's placement was recently reviewed and a number of factors, including his vulnerabilities, were taken into account, however the department had advised that his placement remained appropriate. The Minister also noted that IHMS has advised that Mr X has been referred for specialist psychological counselling and appropriate specialist treatment in early 2018 for an injury sustained in an assault. The Minister further advised that it is long-standing policy that individuals who are the subject of an adverse security assessment will remain in held immigration until such time that a durable solution is found that is consistent with Australia's international obligations.

The Ombudsman notes with serious concern that without changes to current policy and practice relating to individuals who are the subject of adverse security assessments, Mr X will remain in an immigration detention facility for an indefinite period. The Ombudsman is seriously concerned about the risk that indefinite detention poses to Mr X's mental and physical health.

1. The Ombudsman strongly recommends that the government prioritise finding a durable solution for individuals with adverse security assessments that is consistent with Australia's international obligations.

IHMS has advised that Mr X requires treatment for multiple complex mental health concerns and a psychologist recommended that he be closely monitored as his psychological state was fragile. Mr X has also expressed suicidal ideation related to his detention circumstances and presented with symptoms of PTSD related to an incident of sexual assault that occurred at Facility B.

The Ombudsman notes with serious concern IHMS's advice that Mr X's mental health was likely to be adversely affected by his current placement as a treating psychiatrist had reported that his mental health had deteriorated due to his prolonged detention and uncertain future.

2. The Ombudsman recommends that the department explore options to transfer Mr X to a lower security detention placement that is more appropriately tailored to accommodating vulnerable individuals, such as a designated alternative place of detention in the community.

The Ombudsman notes that Mr X attended specialist torture and trauma counselling in June and August 2017. In February 2018 Mr X advised that he has informed IHMS that he wished to continue attending counselling, but he had not yet had another appointment.

3. The Ombudsman recommends that the department follow up with IHMS to ensure that Mr X can attend ongoing specialist torture and trauma counselling.

The Ombudsman notes that Mr X was reviewed by an orthopaedic spinal surgeon in January 2017 who noted that his back pain could be managed with swimming and electrical nerve stimulation treatment with a TENS machine. In February 2018 the surgeon recommended that TENS treatment be commenced as soon as a provider could be identified.

4. The Ombudsman recommends that the department follow up with IHMS to ensure that Mr X can commence TENS treatment as soon as possible in accordance with the recommendation of the treating orthopaedic spinal surgeon in January 2017.
5. The Ombudsman also recommends that the department consider facilitating visits to a swimming facility to enable Mr X to swim in accordance with the recommendation of the treating orthopaedic spinal surgeon in January 2017.