

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).

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| Name | Mr X |
| Citizenship | Country A |
| Year of birth | 1980 |
| Ombudsman ID | 1002725-O |
| Date of department's reports | 29 July 2017 and 1 February 2018 |
| Total days in detention | 917 (at date of department's latest report) |

Detention history

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| 27 August 2012 | Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Facility B |
| 22 September 2012 | Transferred to Facility C. |
| 20 October 2012 | Transferred to Facility D. |
| 12 December 2012 | Granted a bridging visa and released from immigration detention. |
| 16 April 2015 | Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility E. |
| 11 June 2015 | Transferred to Facility B. |
| 9 October 2015 | Transferred to Facility F. |
| 25 May 2016 | Granted a bridging visa and released from immigration detention. |
| 23 December 2016 | Re-detained under s 189(1) following the cancellation of his bridging visa under s 116. He was transferred to Facility E. |

Visa applications/case progression

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| 12 December 2012 | Granted a bridging visa. |
| 29 July 2013 | Lodged a Protection visa application which was deemed invalid as the s 91K bar had not been lifted. |
| 13 August 2015 | The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application. |
| 16 September 2015 | Lodged a Temporary Protection visa (TPV) application. |
| 22 February 2016 | Mr X was notified that he is eligible to receive the Primary Application Information Service to assist him with lodging a new temporary visa application or providing supporting information for his existing application. He accepted the offer on 23 February 2016. |
| 11 April 2016 | Lodged a second TPV application. |
| 22 April 2016 | Withdrew his first TPV application. |

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| 23 May 2016 | Granted a bridging visa. |
| 23 December 2016 | Issued with a Notice of Intention to Consider Cancellation of his bridging visa under s 116. His bridging visa was cancelled on the same day. |
| 9 January 2017 | The Administrative Appeals Tribunal affirmed the cancellation decision. |
| 1 February 2018 | The Department of Home Affairs (the department) advised that finalisation of Mr X's TPV application and any consideration of an alternate placement either in the community or on a bridging visa is delayed pending the conclusion of his outstanding criminal matters. |

Criminal history

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| <p>The department advised that Mr X was convicted of a number of criminal offences between November 2013 and March 2017 including entering enclosed land without a lawful excuse, shoplifting, and having goods in his personal custody that were suspected to have been stolen. He received multiple fines and two good behaviour bonds for a period of one year and three months.</p> | |
| July 2016 | Charged with a burglary offence. The finalisation of this matter remained ongoing at the time of the department's latest report. |
| February 2018 | The department advised that Mr X is the subject of three outstanding warrants for unlawful assault, fail to answer bail and burglary. He has been identified for transfer so that the outstanding warrants may be executed. |

Health and welfare

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| <p>International Health and Medical Services (IHMS) advised that while placed in an immigration detention facility in 2015 Mr X had required supportive counselling and monitoring for stress associated with family members being killed and injured in a bomb blast in Country A. Following the death of one of his children and the hospitalisation of his wife, Mr X was placed on Supportive Monitoring and Engagement observations due to deterioration in his mental state and an incident of self-harm.</p> <p>Following his return to an immigration detention facility in December 2016, Mr X was referred to a psychiatrist in March 2017 after presenting with insomnia, depressed mood and low appetite. In May 2017 the psychiatrist diagnosed Mr X with insomnia secondary to anxiety. The psychiatrist advised that he was also struggling with symptoms associated with drug dependency and he was placed on a methadone maintenance program. Mr X was referred for specialist counselling to assist with feelings of guilt and pain associated with his family's circumstances.</p> <p>Mr X received treatment for symptoms associated with opioid withdrawal including muscle pain, sleep disturbance, nausea, abdominal cramps and anxiety. He attended supportive counselling and was reviewed by a rehabilitation specialist.</p> <p>IHMS further advised that Mr X was diagnosed with hepatitis C in April 2015 and was reviewed by a liver specialist as required. He also received treatment for ongoing back pain and was referred for physiotherapy.</p> | |
| 17 April 2015 | An Incident Report recorded that Mr X was transported to hospital by ambulance after collapsing. |
| 25 April 2015 | An Incident Report recorded that Mr X self-harmed. |

Detention incidents

Mr X was allegedly involved in numerous incidents in detention including physical altercations with other detainees and displaying abusive and aggressive behaviour towards detainees and detention centre staff.

Information provided by Mr X

During an interview with Ombudsman staff in September 2017 Mr X explained that he had not seen his case manager in more than three months and he had not been advised of any progression with his TPV application.

Mr X stated that he was very worried about his wife and four children who live in Country B. He explained that he has a responsibility to provide for them, and they are struggling without him while he remains in detention.

Mr X explained that he experienced a lot of difficulties when he was living in the community because he did not have working rights and his family in Country B was struggling financially. He said that he struggled to communicate with other people because of his limited English language skills and this meant that he did not understand people's intentions towards him. He explained that he became addicted to pain relief medication for back pain and people took advantage of his addiction. He said that these addiction problems led to his issues with the police.

Mr X stated that he takes medication to assist with sleeping difficulties and nightmares associated with worrying about his wife and children.

Ombudsman assessment

Mr X was detained on 27 August 2012 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than two and a half years.

On 13 August 2015 the Minister lifted the bar under s 46A to allow Mr X to apply for a temporary visa and on 11 April 2016 Mr X lodged a second TPV application.

The department advised that finalisation of Mr X's TPV application and any consideration of an alternate placement either in the community or on a bridging visa is delayed pending the conclusion of his outstanding criminal matters.

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. IHMS advised that Mr X was diagnosed with insomnia secondary to anxiety and was referred for specialist counselling to assist with feelings of guilt and pain associated with his family's circumstances.