

## 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 1001305-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1989
<b>Ombudsman ID</b>	1001305-O1
<b>Date of DIBP's reports</b>	5 April 2017 and 5 October 2017
<b>Total days in detention</b>	1,640 (at date of DIBP's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
3 May 2017	Transferred to Christmas Island IDC.
9 August 2017	Transferred to Perth IDC.
24 August 2017	Transferred to Christmas Island IDC.

### Recent visa applications/case progression

23 December 2016	The Immigration Assessment Authority (IAA) affirmed the Department of Immigration and Border Protection's (the department) decision to refuse Mr X's Temporary Protection visa (TPV) application.
17 January 2017	Applied to the Federal Circuit Court (FCC) for judicial review.
5 April 2017	The department advised that Mr X was referred for removal action on 10 February 2017 but was not being considered at that time due to his ongoing court matter.
17 August 2017	The FCC dismissed Mr X's application for judicial review due to his non-appearance at a scheduled hearing.
7 September 2017	Applied to the FCC to have his matter reinstated and a hearing was scheduled for 30 October 2017.
5 October 2017	The department advised that pending the FCC's judgment, Mr X may be assessed against the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X engaged with the mental health team for the management of symptoms of depression, insomnia, rumination and a history of torture and trauma. During a review Mr X presented with feelings of distress and frustration and stated that he would not return to his home country. He continued to be regularly monitored by a general practitioner (GP) for anxiety and situational stress related to his pending court case.

IHMS further advised that Mr X has an ear condition and previously received treatment for ear infections. Mr X attended an appointment with an ear, nose and throat (ENT) surgeon in June 2017 and the surgeon advised that he required further examination before being prescribed with treatment. His condition continued to be monitored by a GP and he was awaiting a further review with an ENT surgeon at the time of IHMS's latest report.

28 June 2017

An Incident Report recorded that Mr X threatened self-harm.

## Information provided by Mr X

Mr X was offered the opportunity to discuss his detention circumstances with Ombudsman staff but declined to do so.

## Ombudsman assessment/recommendation

Mr X was detained on 8 April 2013 after arriving in Australia by sea and has been held in an immigration detention facility for more than four and a half years.

The Ombudsman's previous assessment recommended that since Mr X's criminal matters had been finalised, he be considered for a bridging visa under s 195A pending the resolution of his immigration status.

On 1 March 2017 the Minister advised that Mr X did not have any matters before the department or tribunals and advised that he had asked the department to consider Mr X's removal from Australia. The Minister further advised that he would not consider Mr X for a bridging visa at that time.

On 5 April 2017 the department advised that the Minister's statement to Parliament was finalised before the department became aware that Mr X had applied for judicial review.

On 23 December 2016 the IAA affirmed the department's decision to refuse Mr X's TPV application. At the time of the department's latest report Mr X was awaiting the outcome of judicial review.

On 5 October 2017 the department advised that pending the FCC's judgment, Mr X may be assessed against the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.

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.

In light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, the Ombudsman recommends that Mr X be considered under s 195A for the grant of a bridging visa.