

## 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 a cumulative period of more than 54 months (four and a half years). The previous assessment 1000373-O was tabled in Parliament on 23 November 2016. 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>	1984
<b>Ombudsman ID</b>	1000373-O1
<b>Date of DIBP's reports</b>	7 December 2016 and 8 June 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 (1000373-O), Mr X remained at Facility B.	
16 November 2016	Transferred to Facility C.  The Department of Immigration and Border Protection (the department) advised that Mr X was transferred because of an operational need to rebalance the network and ensure detention facility stability.

### Recent visa applications/case progression

3 August 2016	Mr X was referred to an external agency.
11 August 2016	Found not to meet the guidelines for referral to the Minister under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa.
15 November 2016	Found not to meet the guidelines for referral to the Minister under s 197AB for a community detention placement.
2 December 2016	The Federal Circuit Court dismissed Mr X's application for judicial review of his negative International Treaties Obligations Assessment outcome.
7 December 2016	The department advised that Mr X is a person of interest to the department and police in relation to an alleged threat made by Mr X against a third party.
19 December 2016	Applied to the Federal Court (FC) for judicial review.
31 May 2017	The FC dismissed Mr X's application for judicial review.
6 June 2017	The police advised the department that information relating to the alleged threat had been filed for intelligence as there was no scheduled date for Mr X's release from detention and the allegation had not been substantiated.
8 June 2017	The department advised that Mr X's case would not be considered under s 197AB while he remains of interest to an external agency.  The department further 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 advised that Mr X presented with symptoms of anxiety and depression related to his immigration status and separation from his wife and daughter who reside in the community. He regularly attended counselling until January 2017 when he declined further counselling after experiencing a panic attack after receiving negative news regarding his immigration situation.</p>	
<p>29 November 2016</p>	<p>An Incident Report recorded that Mr X was assaulted by two detainees at Facility C. The department advised that the incident was referred to the police for investigation.</p>

## Other matters

Mr X's daughter was born in May 2016 and is an Australian citizen. The department advised that she resides in City D with her mother.

## 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 for a cumulative period of more than four and a half years. He has no matters before the department, the courts or tribunals and is on a removal pathway.

The Ombudsman's previous assessment (1000373-O) noted Mr X's advice that his partner and child are Australian citizens and recommended he be considered for a bridging visa or community detention placement pending the resolution of his case.

On 23 November 2016 the Minister advised that Mr X had been found not to meet the guidelines under s 195A and that the department was considering Mr X's case for possible referral to him for consideration under s 197AB.

On 15 November 2016 Mr X's case was found not to meet the guidelines for referral to the Minister under s 197AB.

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 that Mr X's daughter resides with her mother in City D and Mr X experiences anxiety and depression related to being separated from them.

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

In light of these concerns and the significant length of time Mr X has remained in detention, the Ombudsman recommends that Mr X be transferred to Facility E or Facility B to enable him to reside closer to his family while he awaits the resolution of his immigration status.