

## 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 a cumulative period of more than 54 months (four and a half years). The previous assessments are:

1001062 tabled in Parliament on 5 March 2014

1001371 tabled in Parliament on 22 October 2014

1002078 tabled in Parliament on 3 June 2015

1002863 tabled in Parliament on 8 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>	Stateless, born in Country A <sup>1</sup>
<b>Year of birth</b>	1989
<b>Ombudsman ID</b>	1000850-O
<b>Date of DIBP's reports</b>	15 December 2016 and 16 June 2017
<b>Total days in detention</b>	1,640 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002863), Mr X has remained at Facility B.

### Recent visa applications/case progression

13 September 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 14 September 2016 and was assigned a provider.
1 November 2016	Mr X's case was referred on a ministerial submission for consideration under ss 195A and 197AB of the <i>Migration Act 1958</i> for the grant of a bridging visa or a community detention placement. On 11 November 2016 the matter was finalised without action from the Minister.
6 December 2016	Temporary Protection visa (TPV) application refused.
19 December 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review. On 16 March 2017 the AAT remitted the matter to the Department of Immigration and Border Protection (the department) with the direction that Mr X was a person to whom Australia owes protection obligations.
13 April 2017	The department issued Mr X with a Notice of Intention to Consider Refusal of his visa application under s 501 and on 12 May 2017 he provided a response.

<sup>1</sup> Mr X's country of citizenship was previously recorded as Country A, until the department's report of 16 June 2017 which advised that he is considered to be stateless.

16 June 2017	The department advised that Mr X remains a person of interest to an external agency in relation to his conviction for people smuggling offences.
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**Health and welfare**

<p>International Health and Medical Services (IHMS) advised that Mr X was prescribed with medication and closely monitored by the mental health team for depression, suicidal ideation and a history of self-harm. In September 2016 a treating psychiatrist reported that he presented with symptoms of low mood, insomnia and situational stress.</p> <p>In December 2016 Mr X self-harmed. He was placed on Supportive Monitoring and Engagement observations and was noted to be suffering from acute situational disturbance. He was reviewed by a psychiatrist on 24 December 2016 who noted that his distress was caused by situational factors and admission to a psychiatric hospital would have little positive effect on his condition.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns, including liver concerns and high cholesterol. He was referred for investigative testing and his condition continued to be monitored by a general practitioner.</p>	
December 2016	An Incident Report recorded that Mr X self-harmed.

**Other matters**

6 June 2017	Mr X lodged a complaint with the Australian Human Rights Commission. The matter remained ongoing.
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### Information provided by Mr X

During a telephone conversation with Ombudsman staff in August 2017 Mr X expressed frustration about delays in his immigration case and being unable to care for his elderly ill parents who reside in the community. He advised that the Minister was considering whether he passed the character test under s 501 and said that his case manager had told him to wait until the Minister had made a decision.

Mr X explained that he was previously held in criminal custody after being charged with people smuggling offences. He said that he pleaded guilty to the offences on the advice of his lawyer because he wanted the experience to be over for himself and his family and he had been told that he would be released and able to reside with his parents once the case was finalised. However, he stated that on his release he was detained and had now remained in detention for almost five years. He said he was sad and frustrated by the years of his life he had lost to detention.

Mr X explained that he did not have any problems with other detainees or officers at Facility B who he understood were just doing their job. However, he reported that the time he had spent in detention separated from his family had a significant impact on his mental health. He advised that he had twice been hospitalised for up to two months for mental health treatment. He said the treatment had helped for a short time, but his condition deteriorated when he returned to detention. He stated that he did not find IHMS mental health support to be helpful and felt the counsellors were uninterested, repetitive and the sessions just reminded him of how miserable he was.

He said that he was very worried about his parents' welfare because his mother had recently suffered a heart attack and stroke. He advised that his other siblings had to work and care for their own families and were unable to provide the care his parents needed. Mr X reported that he had told his parents not to visit him at Facility B because the trip was difficult for them to make. He said that he talked to them on the phone every day but had not seen them for over six months. He reported that he had declined supervised visits to his parents' home because he knew that his mother would be very negatively affected by him having to leave her and return to detention. He said that he just wants to be able to be with his parents for the time they have left.

## **Ombudsman assessment/recommendation**

Mr X was found to be owed protection under the complementary protection criterion on 21 June 2012 and has been held in an immigration detention facility for more than four and a half years.

On 6 December 2016 Mr X was found not to be owed protection and his TPV application was refused. On 16 March 2017 the AAT remitted his application to the department with the direction that he was a person to whom Australia owes protection obligations. The department advised that it was considering the refusal of his visa under s 501.

The Ombudsman's previous assessment (1002863) recommended that the department expedite the referral of Mr X's case to the Minister for consideration under s 197AB.

On 8 November 2016 the Minister advised that Mr X's case had been referred to the external agency for review and that this matter required resolution before the case was referred to him.

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 advice from IHMS that Mr X required treatment for multiple mental health concerns related to his prolonged detention including an episode of self-harm. The Ombudsman further notes that in March 2016 a psychiatrist recommended that Mr X be placed in community detention due to the risk of his mental health further deteriorating if he remains in an immigration detention facility.

1. In light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural concerns, the Ombudsman recommends that Mr X again be considered under ss 197AB and 195A for a bridging visa or community detention placement while he awaits the resolution of his TPV application.
2. The Ombudsman further recommends that the department expedite the resolution of Mr X's case.