

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fourth s 486O assessment on Mr X<sup>1</sup> who has remained in immigration detention for more than 60 months (five years).

The first assessment 1001531 was tabled in Parliament on 11 February 2015, the second assessment 1001988 was tabled in Parliament on 14 October 2015 and the third assessment 1000966-O was tabled in Parliament on 15 February 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>	1976
<b>Ombudsman ID</b>	1000966-O1
<b>Date of DIBP's reviews</b>	2 November 2016 and 3 May 2017
<b>Total days in detention</b>	1,822 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1000966-O), Mr X remained at Facility B.	
12 May 2016	Transferred to Facility C.
29 June 2016	Transferred to Facility B.
23 November 2016	Transferred to Facility C.

### Recent visa applications/case progression

18 August 2016	Temporary Protection visa (TPV) refused. The Department of Immigration and Border Protection (the department) advised that the privacy breach <sup>2</sup> was taken into account when considering the family's protection claims.
24 August 2016	Applied to the Administrative Appeals Tribunal for merits review.
1 November 2016	Mr X's case was referred on a ministerial submission for consideration under s 195A of the <i>Migration Act 1958</i> for the grant of a bridging visa. On 12 December 2016 the Minister declined to consider Mr X's case.
3 April 2017	Mr X's case was again referred on a ministerial submission for consideration under s 195A.

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<sup>1</sup> Mr X was previously the subject of a family assessment with his wife, Ms X and their children. Ms X and their children are no longer subject to review under s 486N as they were granted bridging visas on 25 February 2016 and released from detention.

<sup>2</sup> In a media release dated 19 February 2014 the Minister advised that an immigration detention statistics report was released on the department's website on 11 February 2014 which inadvertently disclosed detainees' personal information. The documents were removed from the website as soon as the department became aware of the breach from the media. The Minister acknowledged this was a serious breach of privacy by the department.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X presented with symptoms of anxiety, depression and insomnia relating to his immigration status and separation from his family. He continued to attend regular counselling and was monitored by the mental health team.

IHMS further advised that Mr X was provided with treatment for arm pain.

## Other matters

Mr X's wife and children continue to reside in the community on bridging visas.

## Information provided by Mr X

During an interview with Ombudsman staff at Facility C in June 2017 Mr X advised that he continued to await merits review of the decision to refuse his TPV application. He said he has been waiting for a decision for a long time and his case manager did not understand why it was taking so long.

Mr X expressed concern about the impact of his ongoing detention and immigration status on his family. He said that their separation is very hard on his children who all attend counselling for mental health concerns and he is concerned about the pressure on his wife, as she has to take care of the children by herself. He said that his wife was currently unable to have an operation she requires because she needed to look after their children.

Mr X advised that his time in detention has made him very stressed and weak, and he sometimes has problems sleeping because of memories of previous trauma. He said that he sees an IHMS mental health nurse every two weeks and they have helped him manage his stress.

Mr X stated that he was previously convicted of people smuggling offences as he was responsible for organising his family's passage to Australia. He said that in his view he was convicted because his brother in law testified against him as they were involved in an ongoing family dispute.

Mr X claimed that some Serco officers behaved rudely towards him when they escorted him during visits. He said that during his time at Facility C he had not been invited on any excursions.

## 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 facility for more than five years. At the time of the department's latest review Mr X was awaiting the outcome of merits review.

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 further notes with serious concern advice from IHMS that Mr X attends regular counselling for the management of mental health concerns related to his separation from his family.

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.