

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 more than six years. The previous assessment 1000940-O was tabled in Parliament on 21 June 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1980
Ombudsman ID	1000940-O1
Date of department's reports	15 August 2017 and 5 February 2018
Total days in detention	2,180 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Facility C.	
May 2017	Transferred to Facility B.

Recent visa applications/case progression

February 2017	The Minister declined to intervene under ss 195A or 197AB of the <i>Migration Act 1958</i> to grant Mr X a Removal Pending Bridging visa or a community placement.
March 2017	Applied to the Federal Court (FC) for judicial review of the refusal of his Temporary Protection visa (TPV) application.
June 2017	The FC quashed the refusal decision and remitted Mr X's case to the Department of Home Affairs (the department) for reconsideration.
September 2017	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa.
September 2017	Issued with a Notice of Intention to Consider Refusal (NOICR) of his TPV under s 501. Mr X provided a response in January 2018.
February 2018	The department advised that it had commenced reconsideration of Mr X's TPV application under s 501. The department further advised that Mr X would not be considered for a bridging visa or community placement while his case is being considered under s 501.

Other legal matters

June 2017	A magistrate's court discharged a charge of unlawful assault against Mr X as he had successfully completed a diversion program.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to attend specialist counselling and receive treatment for the management of complex mental health concerns, including symptoms related to his prolonged detention and the uncertainty of his immigration status. He was reviewed by a psychiatrist who recommended that Mr X be transferred to Facility C for the benefit of his mental health. While his mood was noted to have improved following his transfer to Facility C, an IHMS Medical Director advised that Mr X's incidents of self-harm and thoughts of suicide were strongly related to his prolonged detention and that he was at an increased risk of developing mental health problems while his immigration status remained unresolved. He continued to be closely monitored by the mental health team. IHMS also reported that Mr X previously underwent neuropsychological testing which identified a cognitive impairment.

IHMS further advised that Mr X continued to be prescribed with medication for a medical condition. He was monitored by a general practitioner and underwent regular pathology testing.

March 2017	Incident Reports recorded that Mr X self-harmed on two occasions.
March 2017 and April 2017	Incident Reports recorded that Mr X threatened self-harm on two occasions.
March 2017 – April 2017	IHMS reported that Mr X refused food and fluid.

Other matters

June 2017	<p>During an interview with Ombudsman staff at Facility C, Mr X was observed to have become very upset and distressed while describing his experiences in detention. Ombudsman staff raised concerns about Mr X's mental wellbeing with detention centre staff and IHMS personnel advised that a welfare check would be conducted.</p> <p>An Incident Report recorded that Mr X was subsequently monitored by Serco officers and assessed by the mental health team with no further monitoring required.</p>
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Information provided by Mr X

During an interview with Ombudsman staff in June 2017 Mr X stated that he had been in detention for a long time and that the Minister had declined to intervene in his case to release him into the community. He advised that he was currently awaiting the response of another request to be released.

Mr X advised that the state of his mental health varied. He explained that he sometimes felt very sad thinking about his family. He said that he had self-harmed and refused food and fluid on several occasions. Mr X advised that he was prescribed with medication for his mental health concerns which he took from time to time but he felt that the medication was not helping him. He stated that he was seen by a specialist counsellor twice or three times a month if his condition deteriorated.

Mr X said that he took part in activities and that he used to enjoy going on excursions, but he had not been on an excursion for many months. He stated that he was in contact with his mother and that community organisations came to visit him sometimes.

Ombudsman assessment

Mr X was detained on 17 February 2012 after arriving in Australia by sea and has remained in an immigration detention facility for more than six years.

The Ombudsman's previous assessment recommended that priority be given to resolving Mr X's immigration status and that his case be expedited for consideration for a bridging visa or community placement in light of his ongoing mental health concerns.

On 21 June 2017 the Minister advised that he had considered Mr X's case under ss 195A and 197AB and declined to intervene. The Minister further advised that Mr X had sought review of the department's decision to refuse his TPV.

The FC quashed the refusal decision in June 2017 and remitted Mr X's case to the department for reconsideration.

In September 2017 the department issued Mr X with a NOICR of his TPV under s 501. The department has advised that Mr X will not be considered for a bridging visa or community placement while his case is being considered under s 501.

The department continued to reconsider Mr X's TPV application under s 501 at the time of its latest report.

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 has advised that Mr X receives ongoing treatment for complex mental health concerns. An IHMS Medical Director reported that Mr X's incidents of self-harm and thoughts of suicide are strongly related to his prolonged detention and that he is at an increased risk of developing mental health problems while his immigration status remains unresolved.