

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the first s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1980
<b>Ombudsman ID</b>	1002578-O
<b>Date of DIBP's reports</b>	18 January 2017 and 19 July 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest report)

### Detention history

12 August 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to an Alternative Place of Detention, Christmas Island.
22 August 2012 – 6 October 2012	Transferred four times between various immigration detention facilities.
22 November 2012	Granted a bridging visa and released from detention.
1 May 2015	Re-detained under s 189(1) following the cancellation of his visa under s 116. He was transferred to Facility C.
5 August 2015	Transferred to Facility D.
13 July 2017	Transferred to Facility E in preparation for a court hearing.

### Visa applications/case progression

22 November 2012	The Minister lifted the bar under s 46A to allow Mr X to lodge a temporary visa application. He was granted a bridging visa on the same day and released from detention.
24 December 2012	Lodged a Protection visa application.
18 March 2013	Granted a further bridging visa.
2 October 2013	Protection visa application refused.
18 October 2013	Applied to the Refugee Review Tribunal (RRT) for merits review.
1 May 2015	The Department of Immigration and Border Protection (the department) cancelled Mr X's bridging visa under s 116 as he had not disclosed in his Protection visa application that he had been convicted of a criminal offence and served a custodial sentence in Country B. He subsequently applied to the Migration Review Tribunal (MRT) for merits review.
14 May 2015	MRT affirmed original decision.
25 May 2015	RRT affirmed original decision.

17 November 2015	The department advised that as Mr X had no immigration matters before the department, the courts or tribunals, he had been referred for removal action.
27 April 2017	Found not to meet the guidelines under s 195A for the grant of a bridging visa.
19 July 2017	The department advised that Mr X was awaiting the outcome of criminal proceedings.

#### Other legal matters

June 2016	Mr X was charged with rioting offences following a disturbance at Facility D. He was scheduled to attend a five-day trial at a magistrate's court commencing on 24 July 2017.
-----------	---

#### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X was admitted to hospital for surgery on 2 July 2014 after he attempted suicide during a state of psychosis. He remained in hospital under observation until 8 July 2014 due to ongoing paranoia and suicidal thoughts. A history of suicide attempts prior to his arrival in Australia was also identified.</p> <p>Mr X disclosed a history of torture and trauma on 23 August 2012 and attended specialist counselling on 2 June 2016. On 27 January 2016 he was reviewed by a psychiatrist and diagnosed with major depression and insomnia. The psychiatrist also noted that he had a history of substance abuse and was previously admitted to a psychiatric hospital on two occasions following incidents of self-harm. He was prescribed with medication, however he declined to continue taking his medication on 28 April 2016 and did not attend ongoing mental health assessments.</p>	
4 – 8 April 2014	Admitted to a psychiatric hospital.
2 July 2014	An Incident Report recorded that Mr X was admitted to hospital following an incident of self-harm.

#### Ombudsman assessment

<p>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 a cumulative period of more than two and a half years.</p> <p>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 that Mr X has a history of complex mental health concerns, including paranoia and suicide attempts, and required admission to a psychiatric hospital.</p> <p>The Ombudsman further notes that Mr X's bridging visa was cancelled under s 116 as he had not disclosed in his Protection visa application that he had been convicted of a criminal offence and served a custodial sentence in Country B.</p> <p>Additionally, the Ombudsman notes that Mr X was awaiting trial at a magistrate's court in relation to rioting charges at the time of the department's latest report.</p>
--