

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 two and a half years.

Name	Mr X
Citizenship	Country A
Year of birth	1987
Ombudsman ID	1002759-O
Date of department's reports	7 September 2017 and 2 March 2018
Total days in detention	905 (at date of department's latest report)

Detention history

July 2012	Detained under s 189(3) of the <i>Migration Act 1958</i> after arriving in Australia by sea. He was transferred to Facility B.
August 2012	Transferred to Facility C.
August 2012	Transferred to Facility D.
October 2012	Placed in the community. ¹
May 2013	Granted a bridging visa and released from immigration detention. He was granted a further bridging visa which ceased in February 2016.
July 2016	Re-detained under s 189(1) after living unlawfully in the community. He was transferred to Facility E.

Visa applications/case progression

August 2012	The Minister lifted the bar under s 46A to allow Mr X to lodge a Protection visa application.
October 2012	The Minister intervened under s 197AB to grant Mr X and his family a community placement.
November 2012	Lodged a Protection visa application.
March 2013	Protection visa application refused.
May 2013	The Refugee Review Tribunal (RRT) ² affirmed the refusal decision.
May 2013	Granted the first of two bridging visas. Mr X's second bridging visa ceased in February 2016 and he remained in the community unlawfully.
June 2014	Applied to the Federal Circuit Court (FCC) for judicial review.
October 2016	The FCC quashed the RRT's decision and remitted Mr X's case to the RRT for reconsideration according to law.

¹ Mr X and his family were granted a placement in the community under s 197AB and remained in immigration detention.

² On 1 July 2015 the Migration Review Tribunal and RRT were merged into the AAT.

January 2017	The Administrative Appeals Tribunal (AAT) affirmed the decision to refuse Mr X's Protection visa application.
March 2017	Applied to the FCC for judicial review of the AAT decision.
February 2018	The FCC affirmed the AAT decision.
March 2018	Applied to the Federal Court for judicial review.
March 2018	The Department of Home Affairs (the department) advised that Mr X was not being considered for an alternative detention placement due to the risk he posed to the community.

Criminal history

June 2016	Mr X was convicted of an offence and sentenced to one year imprisonment. His sentence was suspended on the condition that he enter into a one year good behaviour bond.
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Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X received treatment for the management of multiple complex mental health concerns. He attended specialist counselling and it was strongly recommended that Mr X be placed in the community for the benefit of his mental health and the wellbeing of his family. IHMS reported that Mr X required increased support from the mental health team during periods of heightened stress related to the welfare of his family in the community and his immigration status. Mr X was prescribed with medication for the management of his symptoms.</p> <p>IHMS further advised that Mr X received treatment for multiple physical health concerns. He underwent investigative testing and was reviewed by a specialist who conducted further investigation and identified no abnormalities.</p>	
August 2016 and November 2017	Incident Reports recorded that Mr X threatened self-harm on two occasions.
January 2017	An Incident Report recorded that Mr X was transported to hospital by ambulance.

Other matters

<p>In March 2018 the department advised that Mr X's wife was residing in the community on a Safe Haven Enterprise visa. Mr X's step daughter and daughter remain under the care of a state government department.</p>	
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Ombudsman assessment

Mr X was detained in July 2012 after arriving in Australia by sea and has remained in immigration detention, both in a detention facility and the community, for a cumulative period of more than two and a half years.

In August 2012 the Minister lifted the bar under s 46A to allow Mr X to apply for a Protection visa and in November 2012 Mr X lodged an application for a Protection visa.

Mr X's Protection visa application was refused in March 2013 and in May 2013 the RRT affirmed the refusal.

In October 2016 the FCC quashed the RRT's decision and remitted Mr X's case to the RRT for reconsideration according to law. In January 2017 the AAT affirmed the decision to refuse Mr X's Protection visa application. In February 2018 the FCC affirmed the AAT decision.

At the date of the department's latest report Mr X was awaiting the outcome of judicial 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.

IHMS has advised that Mr X required monitoring for multiple complex mental and physical health concerns. A specialist counsellor strongly recommended that Mr X be placed in the community for the benefit of his mental health and the wellbeing of his family.

The Ombudsman notes the department's advice that at the time of its latest report, Mr X was not being considered for an alternative detention placement due to the risk he posed to the community.