

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the third s 486O assessment on Mr X who remained in immigration detention for more than 42 months (three and a half years). The previous assessment 1002198-O1 was tabled in Parliament on 10 May 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	1978
Ombudsman ID	1002198-O2
Date of DIBP's review	19 April 2017
Total days in detention	1,276 (at date of DIBP's review)

Recent detention history

Since the Ombudsman's previous assessment (1002198-O1), Mr X remained at a correctional facility.	
28 January 2017	Transferred to Facility B upon completion of his custodial sentence.
July 2017	Mr X was released from immigration detention when he was involuntarily removed from Australia.

Recent visa applications/case progression

2 December 2016	The Federal Circuit Court dismissed Mr X's application for judicial review of his negative protection outcome.
14 February 2017	Mr X requested removal from Australia under s 198 of the <i>Migration Act 1958</i> . This request was later withdrawn on 8 June 2017.
19 April 2017	The Department of Immigration and Border Protection (the department) advised that as Mr X had no matters before the department, the courts or tribunals, he was on a removal pathway.

Health and welfare

International Health and Medical Services (IHMS) advised that Mr X was transferred to hospital following an incident of self-harm associated with the possibility of being transferred to Christmas Island IDC. He reported ongoing concern and worry about this possibility and was assessed as being at low risk of suicide, self-harm and harm to others. However, IHMS noted that this risk would significantly increase if he were to be transferred to Christmas Island IDC. IHMS further advised that Mr X was prescribed with pain-relief medication and was reviewed for ongoing back pain.	
8 February 2017	An Incident Report recorded that Mr X self-harmed and was transferred to hospital.

Other matters

24 July 2017	<p>The department notified the Office of the Commonwealth Ombudsman (the Office) that Mr X had been unlawfully detained. The department advised during a review of his case on 7 July 2017 it had identified defects regarding the notification of the refusal of Mr X's application for a permanent partner visa on 29 August 2013. As a result of this defective notification, he was assessed as holding a valid bridging visa and was released from immigration detention.</p> <p>Mr X was re-detained later that day following the cancellation of his bridging visa under s 116 due to his criminal history.</p>
16 August 2017	<p>Following the advice provided from the department, the Office initiated an investigation under s 8 of the <i>Ombudsman Act 1976</i> regarding the unlawful detention of Mr X.</p> <p>The department provided a response on 20 September 2017 and advised that upon further investigation the department had formed the view that although Mr X was found to be holding a valid visa while in held immigration detention, it does not consider the detention to be unlawful. The department is of the view that the detention was lawful under s 189(1) because a reasonable suspicion was held that Mr X was an unlawful non-citizen during the period of his detention.</p> <p>This matter remained subject to further consideration by the Office at the time of drafting this assessment.</p>

Ombudsman assessment

<p>Mr X was found not to be owed protection under the Refugee Convention and the complementary protection criterion and was held in an immigration detention facility for more than three and a half years. He had no outstanding matters before the department, the courts or tribunals and was involuntarily removed from Australia in July 2017.</p> <p>The Ombudsman notes with concern that the department notified the Office on 24 July 2017 that Mr X had been unlawfully detained, but subsequently advised on 20 September 2017 that his detention was not considered to be unlawful as the department held a reasonable suspicion that he was an unlawful non-citizen during the period of his detention.</p> <p>Concerns regarding the possible unlawful detention of Mr X remained subject to further consideration by the Office at the time of drafting this assessment.</p>
