

## 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 who has remained in immigration detention for a cumulative period of more than five years. The previous assessment 1001135-O was tabled in Parliament on 13 September 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>	1981
<b>Ombudsman ID</b>	1001135-O1
<b>Date of department's report</b>	23 October 2017 <sup>1</sup>
<b>Total days in detention</b>	1,820 (at date of department's latest report)

### Recent detention history

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

### Recent visa applications/case progression

November 2016	The Federal Circuit Court (FCC) found that the Protection Obligations Evaluation (POE) process was affected by legal error and remitted Mr X's case to the Department of Home Affairs (the department) for further assessment of his protection claims.
October 2017	<p>The department advised that it was reviewing its policy for the assessment of cases such as Mr X's. These cases have been remitted to the department from a federal court where previous protection assessments were made administratively and have been found to be affected by legal error.</p> <p>The department further advised that since there had been no significant change in Mr X's case, consideration for the grant of a bridging visa under s 195A of the <i>Migration Act 1958</i> was not deemed to be appropriate at the time.</p>
April 2018	<p>The department advised that it was preparing a ministerial submission for referral to the Minister to consider exercising his non-compellable power under s 46A to lift the bar to allow Mr X and other such cases to lodge a temporary visa application.</p> <p>The department advised that if the Minister declines to intervene, a further administrative assessment of Mr X's case and other such cases would be conducted in accordance with current policy.</p>

<sup>1</sup> The department advised that departmental systems indicated an inconsistency in calculating Mr X's days in detention. Due to the correction in calculating Mr X's days in detention, this report supplements the previously provided 60-month report, dated 6 April 2017.

## Health and welfare

International Health and Medical Services (IHMS) advised that Mr X continued to be monitored for multiple complex mental health concerns. He attended specialist counselling and was prescribed with antidepressant medication. He was reviewed by a psychologist who advised that Mr X's mental health was unlikely to improve while he remained in detention. He was placed on Psychological Support Program observations following an incident of self-harm and continued to engage with the mental health team.

IHMS further advised that Mr X continued to receive treatment for chronic pain. He was prescribed with medication and attended physiotherapy for the management of his symptoms. Mr X underwent investigative testing which identified no significant abnormalities and his condition continued to be monitored by a general practitioner.

July 2017	An Incident Report recorded that Mr X self-harmed.
August 2017	An Incident Report recorded that Mr X threatened self-harm.

## Recent detention incidents

May 2017 – September 2017	Incident Reports recorded that Mr X allegedly displayed abusive and aggressive behaviour toward detention facility staff.
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## Other matters

January 2018	Mr X lodged a complaint with the Office of the Commonwealth Ombudsman in relation to the alleged use of excessive force by detention facility staff. In April 2018 the department provided a response and at the time of drafting this assessment the investigation of Mr X's complaint remained ongoing.
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### **Ombudsman assessment/recommendation**

Mr X was detained in May 2010 after arriving in Australia by sea and has remained in an immigration detention facility for a cumulative period of more than five years.

In November 2016 the FCC found that the POE process was affected by legal error and remitted Mr X's case to the department for further assessment of his protection claims.

The department advised that it was reviewing its policy for the assessment of cases such as Mr X's.

At the time of the department's latest report, the assessment of Mr X's case remained ongoing.

The Ombudsman's previous assessment recommended that in light of the significant length of time Mr X has remained in an immigration detention facility, Mr X's case be referred to the Minister for consideration under s 195A for the grant of a bridging visa.

On 13 September 2017 the Minister advised that he had considered Mr X's case under s 195A and declined to intervene. The Minister further advised that as there had been no significant change in Mr X's case, further consideration under s 195A was not deemed to be appropriate at the time.

The department further advised in its report on 23 October 2017 that Mr X's placement was considered to be appropriate, and that consideration for the grant of a bridging visa was not appropriate at this time.

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 received ongoing treatment for multiple complex mental health concerns and that a treating psychologist reported that Mr X's mental health was unlikely to improve while he remained in detention.

1. Noting the department's advice that consideration of a bridging visa is not considered appropriate at this time, the continued impact of prolonged detention on Mr X's mental health, and the protracted assessment of his case due to policy developments, the Ombudsman recommends that Mr X be considered for transfer to a less restrictive detention facility.