

**REPORT BY THE COMMONWEALTH AND
IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT**

Under s 486O of the Migration Act 1958

This is the second s 486O report on Mr X who has remained in restricted immigration detention for a cumulative period of more than 36 months (three years).

The first report 1002301-O was tabled in Parliament on 14 September 2016. This report updates the material in that report and should be read in conjunction with the previous report.

Name	Mr X
Citizenship	Country A
Year of birth	1978
Ombudsman ID	1002301-O1
Date of DIBP's reports	27 July 2016 and 25 January 2017
Total days in detention	1094 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous report (1002301-O), Mr X remained at Wickham Point Alternative Place of Detention (APOD).	
7 July 2016	Transferred to Yongah Hill Immigration Detention Centre (IDC).
21 October 2016	Transferred to Christmas Island IDC.

Recent visa applications/case progression

2 February 2016	Found not to meet the guidelines for referral to the Minister under ss 417 or 48B of the <i>Migration Act 1958</i> .
7 April 2016	Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a Bridging visa.
25 October 2016	The Federal Court (FC) handed down a judgment in favour of Mr X in relation to his application for judicial review of the refusal of his Bridging visa application. The FC quashed the decision of the Assistant Minister dated 12 November 2014 which refused Mr X's Bridging visa application, on the basis of jurisdictional error. The FC also ordered that the Minister be restrained from removing Mr X from Australia for a period of 10 days.
26 October 2016	Requested ministerial intervention under ss 417 and 48B. Found not to meet the guidelines for referral to the Minister under s 417. However the Department of Immigration and Border Protection (the department) advised that Mr X's request under s 48B seeking permission to lodge a further temporary protection visa application is currently under consideration.
4 November 2016	Mr X's Bridging visa application was referred to the Visa Applicant Character Consideration Unit for consideration under s 501.

25 January 2017	The department advised that it is currently making arrangements to conduct an International Treaties Obligations Assessment (ITOA) to assess whether Mr X's case engages Australia's <i>non-refoulement</i> obligations.
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Health and welfare

International Health and Medical Services advised that Mr X continued to be monitored for hepatitis B.
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Other matters

20 May 2015	Mr X's passport from Country A expired.
9 July 2015	Mr X lodged a complaint with the Australian Human Rights Commission (AHRC). On 6 October 2015 the AHRC forwarded conciliation proposals to the department and on 20 October 2015 the department responded. On 4 May 2016 the AHRC requested further information and the department provided a response on 12 May 2016. The matter remained ongoing at the time of department's latest review.
Mr X's partner, Ms Y, resides in the community on a Bridging visa with their two sons, Master Z who has been granted a protection visa and Master P who was granted a Bridging visa associated with his protection visa application.	

Information provided by Mr X

<p>During a telephone conversation with Ombudsman staff on 4 May 2017 Mr X advised that he had dislocated a toe which required an operation. He stated that the pain associated with his toe prevents him from being able to go to the gym, play soccer or go running. He stated that he has a lot of trouble sleeping, but that he does not want to talk to IHMS about his mental health as it only makes him feel more upset.</p> <p>He expressed frustration with the ongoing delays associated with his case progression and stated that he no longer understands how the system works.</p> <p>Mr X stated that since he had been transferred to Wickham Point APOD in August 2015 he has not been able to see his children or partner who reside in Melbourne. He advised that this separation has had a big impact on his children, and that when he calls them they often ask when he will come back home. He explained that he and his partner tell their children that he is away for work as it is too hard to explain to them that he is in immigration detention. He further stated that his separation from his family has put a lot of pressure on his partner to take care of their children on her own.</p>

Ombudsman assessment/recommendation

<p>Mr X has been held in restricted detention for more than three years. The department advised that it is currently making arrangements to conduct an ITOA to assess whether Mr X's case engages Australia's <i>non-refoulement</i> obligations.</p> <p>The Ombudsman notes that Mr X has been held in a different part of the country from his family since August 2015 and that this separation negatively impacts on his family. The Ombudsman recommends that Mr X be considered for the grant of a Bridging visa or alternatively be transferred to Melbourne Immigration Transit Accommodation or Maribyrnong IDC so that he can be closer to his family for mutual support while he awaits the resolution of his immigration status.</p>
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