# 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 has remained in immigration detention for than 54 months (four and a half years). The previous assessment 1001857-O was tabled in Parliament on 1 March 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

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| **Name** | Mr X |
| **Citizenship** | Country A |
| **Year of birth** | 1985 |
| **Ombudsman ID** | 1001857-O1 |
| **Date of DIBP's reports** | 11 April 2017 and 10 October 2017 |
| **Total days in detention** | 1,640 (at date of DIBP's latest report) |

**Recent detention history**

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| Since the Ombudsman's previous assessment, Mr X remained at Christmas Island Immigration Detention Centre. |

**Recent visa applications/case progression**

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| 12 October 2016 | Mr X's son, Master Y, lodged a Temporary Protection visa (TPV) application which included Mr X as a dependent.<br><br>On 14 November 2016 Mr X was found to be an invalid applicant as he was barred under s 48B of the *Migration Act 1958* from lodging a further protection visa application. |
| 24 January 2017 | Found not to meet the guidelines for referral to the Minister under s 195A for the grant of a bridging visa. |
| 27 January 2017 | Master Y's TPV application was refused. On 9 February 2017 he applied to the Administrative Appeals Tribunal (AAT) for merits review. |
| 13 March 2017 | Mr X was referred for removal action. |
| 11 April 2017 | The department advised that Mr X's removal remained on hold pending the outcome of Master Y's AAT application.<br><br>The department further advised that Mr X and his wife, Ms Z, have refused to register their children with the authorities from Country A and therefore they cannot be granted travel documents. |
| 26 May 2017 | Ms Z lodged a Safe Haven Enterprise visa (SHEV) application which included Mr X as a dependent.<br><br>The department advised that Ms Z's SHEV application was taken as a request for ministerial intervention under s 48B as both Ms Z and Mr X continued to be barred under s 48B. |
| 9 June 2017 | Found not to meet the guidelines for referral to the Minister under s 48B and Ms Z's SHEV application was found to be invalid. |
| 15 June 2017 | Mr X applied to the Federal Circuit Court (FCC) for judicial review of his negative Protection visa application outcome. |

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| 26 September 2017 | FCC adjourned and judgment was reserved. |
| 10 October 2017 | The department advised that Mr X's case was identified for possible referral to the Minister under s 195A. |

**Health and welfare**

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| International Health and Medical Services (IHMS) advised that Mr X presented with stress and separation anxiety related to his placement at Christmas Island IDC and ongoing separation from his wife and two children. Mr X advised that the long distance between him and his family had made it difficult for them to visit and provide him with emotional support. On 10 August 2017 IHMS reported that its staff recommended that Mr X's case manager ask for him to be transferred to Brisbane and reunited with his family.<br><br>IHMS further advised that Mr X received treatment for an ophthalmological concern and was prescribed with antibiotics for the treatment of cysts on his ears. IHMS advised that the cysts had improved with treatment and his condition was monitored by a general practitioner. |

**Other matters**

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| 8 May 2017 | The Australian Human Rights Commission issued the Department of Immigration and Border Protection (the department) with a notice under s 29 of the *Australian Human Rights Commission Act 1986* regarding Mr X's separation from his family. The matter remained ongoing at the time of the department's latest report. |
| Mr X's wife and two children reside in the community in Brisbane on bridging visas. | |

**Ombudsman assessment/recommendation**

Mr X was detained on 14 April 2013 after arriving in Australia by sea and has remained in an immigration detention facility for more than four and a half years.

On 12 October 2016 Mr X's son, Master Y, lodged a TPV application on which Mr X was included as a dependent. Master Y's TPV application was refused on 27 January 2017 and on 9 February 2017 Master Y applied to the AAT for merits review. Mr X has been referred for a removal action and removal planning remains on hold pending Master Y's AAT application.

On 26 May 2017 Mr X's wife, Ms Z, lodged a SHEV application on which Mr X was included as a dependent. As the applicants were barred under s 48B their application was interpreted as a request for ministerial intervention under s 48B. They were found not to meet the guidelines for referral to the Minister under s 48 and their SHEV application was found to be invalid.

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

On 10 October 2017 the department advised that Mr X's case was identified for possible referral to the Minister under s 195A.

The Ombudsman's previous assessment recommended that consideration be given to transferring Mr X to Brisbane to be closer to his family support network.

On 1 March 2017 the Minister noted the recommendation and advised that the department had reviewed Mr X's placement and considered it to be appropriate. The Minister further stated that Mr X and his family had been assessed as meeting the s 195A guidelines and would be referred to the Minister for consideration.

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 advised that Mr X was emotionally distressed and suffered from separation anxiety after being separated from his wife and two children. IHMS recommended that Mr X be transferred to Brisbane so that he can reside closer to his family.

1. In light of the significant length of time Mr X has remained in detention and the absence of any recent behavioural or security concerns, the Ombudsman recommends that the department expedite the consideration of Mr X's case under s 195A.
2. Should Mr X not be granted a bridging visa, the Ombudsman recommends that consideration be given to transferring Mr X to Brisbane ITA to be closer to his family support network.