

## 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 restricted immigration detention for more than 30 months (two and a half years).

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1984
<b>Ombudsman ID</b>	1002461-O
<b>Date of DIBP's reviews</b>	26 July 2016 and 24 January 2017
<b>Total days in detention</b>	912 (at date of DIBP's latest review)

### Detention history

27 July 2014	Detained under s 189(1) of the <i>Migration Act 1958</i> after living unlawfully in the community. He was transferred to Brisbane Immigration Transit Accommodation.
14 September 2014	Transferred to Wickham Point Immigration Detention Centre.
9 January 2015	Transferred to Wickham Point Alternative Place of Detention.
21 June 2016	Transferred to Facility B.

### Visa applications/case progression

16 September 2008	Mr X arrived in Australia on a Higher Education Sector visa valid until 1 March 2011.
2 March 2011	Higher Education Sector visa expired and Mr X remained unlawfully in the community.
26 August 2014	The authorities of Country A issued Mr X with an emergency travel document to facilitate his involuntary removal from Australia. Mr X's involuntary removal was scheduled for 4 September 2014.
2 September 2014	Lodged a Protection visa application with an associated bridging visa application. Mr X's involuntary removal from Australia was subsequently cancelled.
4 September 2014	Bridging visa application refused.
5 September 2014	Applied to the Migration Review Tribunal (MRT) for merits review of his negative bridging visa outcome. The MRT affirmed the original decision on 12 September 2014.
21 January 2015	Protection visa application refused.
30 January 2015	Applied to the Refugee Review Tribunal (RRT) for merits review of his negative Protection visa outcome. The RRT affirmed the original decision on 23 March 2015.
3 February 2015 – 9 January 2017	Lodged five bridging visa applications, all of which were refused.

17 April 2015	Applied to the Federal Circuit Court (FCC) for judicial review of the negative Protection visa outcome. The FCC dismissed the application on 25 August 2015.
3 September 2015	Appealed to the Federal Court (FC). The FC dismissed the application on 16 February 2016.
14 March 2016	Lodged an application with the High Court (HC) for special leave to appeal the FC's decision. The HC dismissed the application on 15 June 2016.
14 May 2016 – 11 January 2017	Applied to the Administrative Appeals Tribunal (AAT) for merits review of his negative bridging visa outcomes on three occasions. The AAT affirmed the original decision on all occasions.
20 July 2016	Found not to meet the guidelines for referral to the Minister under ss 417 and 48B.
5 September 2016 and 16 January 2017	Found not to meet the guidelines for referral to the Minister under s 48B.
28 November 2016	Applied to the FCC for judicial review of the AAT's decision of 26 October 2016 to affirm the Department of Immigration and Border Protection's (the department) decision to refuse a bridging visa.
21 December 2016	The FCC ordered the department and Mr X to file additional documents. The date for the final hearing had not been scheduled at the time of the department's latest review.

### Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of substance abuse and was admitted to hospital on 29 July 2014 after experiencing symptoms of drug withdrawal and threatening self-harm. His medication for lower back pain continued to be monitored by a general practitioner under a pain management plan to prevent future drug dependence.</p> <p>IHMS further advised that Mr X was diagnosed with hepatitis C in July 2014 and received treatment at a specialist clinic. A treating specialist advised that he was not eligible for publically funded treatment as there was no evidence of fibrosis or cirrhosis. IHMS reported that Mr X subsequently refused food and fluid between 5 November 2015 and 7 November 2015 in protest of this decision.</p> <p>Mr X received further hepatitis C treatment between September and November 2016 with pathology indicating that his condition had been successfully treated. He was advised to attend follow up appointments to monitor the success of the treatment.</p> <p>IHMS advised that Mr X also received treatment for other conditions, including insomnia.</p>	
23 November 2014	An Incident Report recorded that Mr X threatened self-harm.

**Information provided by Mr X**

During an interview with Ombudsman staff at Facility B in June 2017 Mr X advised that he had applied to the Full Federal Court for judicial review of the department's decision to refuse a bridging visa application.

Mr X stated that he had agreed to be returned to Country A and reported that he was cooperating with the department to obtain a travel document. He said he had been waiting for more than 10 months and does not understand why it was taking so long to obtain a travel document. He stated that he has repeatedly asked to be released into the community on a bridging visa while this process continues.

Mr X said that he had recently lodged a further bridging visa application and his cousin, who resides in Australia, had provided a statutory declaration stating that he would be responsible for him. However, Mr X advised that he had not been released as his cousin had been asked to pay a \$20,000 bond and his cousin could not afford this.

Mr X advised that he had received treatment for hepatitis C and his condition was resolved.

**Case status**

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has been held in restricted detention for more than two and a half years. At the time of the department's latest review Mr X was awaiting the outcome of judicial review.