

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 a cumulative period of more than 48 months (four years). The previous assessment 1002301-01 was tabled in Parliament on 6 September 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	1002301-02
Date of department's reports	26 July 2017 and 24 January 2018
Total days in detention	1,458 (at date of department's latest report)

Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Christmas Island Immigration Detention Centre (IDC).	
9 August 2017	Transferred to Yongah Hill IDC.

Recent visa applications/case progression

16 February 2017	The Department of Home Affairs (the department) commenced an International Treaties Obligations Assessment (ITOA) to assess whether the circumstances of Mr X's case engage Australia's <i>non-refoulement</i> obligations.
25 July 2017	The department's Visa Applicant Character Consideration Unit (VACCU) advised that it was awaiting the outcome of the ITOA to consider Mr X's bridging visa application under s 501 of the <i>Migration Act 1958</i> .
26 July 2017	The department advised that Mr X's request for ministerial intervention under s 48B to lodge a further protection visa remained on hold while his ITOA was being determined.
12 October 2017	The department finalised the ITOA, determining Mr X's case did not engage Australia's <i>non-refoulement</i> obligations.
19 October 2017	Found not to meet the guidelines for referral to the Minister under s 48B.
28 October 2017	Found not to meet the guidelines for referral to the Minister under s 417 for the Minister to substitute a more favourable decision.
27 November 2017	Applied to the Federal Circuit Court (FCC) for judicial review of the ITOA decision.
6 February 2018	The FCC ordered that the ITOA decision be set aside and that a new ITOA be commenced to determine whether the circumstances of Mr X's case engage Australia's <i>non-refoulement</i> obligations.

Health and welfare

International Health and Medical Services advised that Mr X underwent investigative testing for ongoing pain following a toe injury in January 2017. He was reviewed by an orthopaedic surgeon in April 2017, attended an ultrasound in July 2017, and was referred to an orthopaedic clinic.

Other matters

24 January 2018	The department advised that Mr X's complaint with the Australian Human Rights Commission remained ongoing.
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Ombudsman assessment/recommendation

Mr X has been found not to be owed protection under the Refugee Convention and the complementary protection criterion and has remained in an immigration detention facility for a cumulative period of more than four years.

On 25 July 2017 the department's VACCU advised that it was awaiting the outcome of an ITOA to consider Mr X's bridging visa application under s 501.

On 12 October 2017 the department finalised the ITOA, determining Mr X's case did not engage Australia's *non-refoulement* obligations.

On 6 February 2018 the FCC ordered that the ITOA decision be set aside and a new ITOA be commenced to determine whether the circumstances of Mr X's case engage Australia's *non-refoulement* obligations.

The Ombudsman's previous assessment recommended 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 could be closer to his family for mutual support while he awaits the resolution of his immigration status.

On 6 September 2017 the Minister advised that a placement was sought for Mr X at a Melbourne facility; however, a transfer was not possible at that time due to capacity issues at one facility and the second facility was not appropriate due to Mr X's criminal activity. The Minister further advised that finalisation of Mr X's existing bridging visa application was pending the conclusion of an ITOA.

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.

1. In light of the significant length of time Mr X has remained in detention and his ongoing separation from his family, the Ombudsman recommends that the department expedite the commencement and finalisation of a new ITOA to determine whether Mr X's case engages Australia's *non-refoulement* obligations.
2. The Ombudsman again recommends that Mr X be transferred to a detention facility in Melbourne so that he can be closer to his family for mutual support while he awaits the resolution of his immigration status.