

ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TABLING IN PARLIAMENT

Under s 486O of the Migration Act 1958

This is the second s 486O assessment on Mr X who has remained in immigration detention for a cumulative period of more than 54 months (four and a half years). The previous assessment 1002212-O was tabled in Parliament on 20 October 2016. This assessment provides an update and should be read in conjunction with the previous assessments.

Name	Mr X
Citizenship	Country A
Year of birth	1986
Ombudsman ID	1002212-O1
Date of DIBP's reports	26 October 2016 and 28 July 2017 ¹
Total days in detention	1,640 (at date of DIBP's latest report)

Recent detention history

Since the Ombudsman's previous assessment (1002212-O), Mr X remained at Villawood Immigration Detention Centre (IDC).	
13 January 2017	Transferred to Christmas Island IDC.

Recent visa applications/case progression

9 May 2016	Applied to the Federal Circuit Court (FCC) for judicial review of the Administrative Appeals Tribunal's (AAT) decision regarding the refusal of Mr X's Protection visa.
13 May 2016	Mr X's case was referred on a ministerial submission for consideration under ss 417 and 195A of the <i>Migration Act 1958</i> for the grant of a Former Resident visa or a bridging visa.
27 May 2016	The Minister declined to intervene under ss 417 and 195A.
16 September 2016	FCC found that the AAT decision had been affected by jurisdictional error.
10 October 2016	The matter was remitted to the AAT for reconsideration.
27 January 2017	AAT remitted the matter to the Department of Immigration and Border Protection (the department) with the direction that Mr X is a person in respect of whom Australia has protection obligations because he is a refugee, therefore satisfying s 36(2)(a).
4 April 2017	Issued with a Notice of Intention to Consider Refusal of his Protection visa under s 501.

¹ The department advised that the calculation of Mr X's period of detention had been affected by his initial detention being recorded through a process that preceded the department's current reporting systems. Additionally, in both the 42 and 48-month reports it was incorrectly reported that Mr X had been detained between the period of 7 September 2005 and 8 December 2005. Mr X was held on remand in a correctional facility during this period and had not been detained under s 189(1). The department advised that measures had since been put in place to ensure that future reporting on Mr X would meet s 486N requirements.

27 April 2017	Lodged an appeal with the High Court (HC) to prevent a potential decision by the Minister under s 501.
9 May 2017	Appeal with the HC was dismissed and transferred to the Federal Court (FC).
7 June 2017	Lodged an application for a bridging visa which was deemed invalid.
29 June 2017	FC heard the appeal and judgment was reserved. The matter was later dismissed on 20 July 2017.
28 July 2017	The department advised that Mr X's Protection visa application is being assessed under s 501.

Health and welfare

<p>International Health and Medical Services (IHMS) advised that Mr X has a history of depressive symptoms and has been prescribed with antidepressant medication. In June 2016 Mr X requested a consultation with a psychologist, however he did not attend scheduled appointments until May 2017. During a consultation Mr X advised that he was lacking any sense of direction in his life due to the long period of time that he had spent either in immigration detention or in correctional facilities. Mr X also attended substance abuse education sessions with an IHMS counsellor.</p> <p>IHMS further advised that Mr X received treatment for hepatitis C while he was placed at a correctional facility and had been cleared of the infection.</p>	
25 March 2017	An Incident Report recorded that Mr X was involved in an altercation with another detainee. He was reviewed by IHMS for a nose fracture and was prescribed with pain relief medication.

Other matters

23 March 2017	<p>Mr X lodged a complaint with the Office of the Commonwealth Ombudsman (the Office) in relation to some of his property being misplaced when he was transferred from Villawood IDC to Christmas Island IDC. On 10 May 2017 the department provided a response and on 7 September 2017 the complaint was finalised.</p> <p>The Office noted that some of Mr X's property had been found, and provided suggestions to the department in relation to its property management and complaint handling processes.</p>
30 November 2016	The department was notified that Mr X lodged a complaint with the Australian Human Rights Commission and received a request for conciliation. On 16 December 2016 the department provided a response to the request for conciliation and on 7 June 2017 provided a response to the complaint. The matter remained ongoing at the time of the department's latest report.

Ombudsman assessment/recommendation

Mr X was detained on 21 February 2007 and has been held in detention for more than four and a half years.

Mr X lodged a Protection visa application on 22 September 2015 which was refused on 1 February 2016.

The refusal decision was affirmed by the AAT, however upon appeal the FCC found that the AAT decision had been affected by jurisdictional error. The AAT reviewed the decision and on 27 January 2017 the matter was remitted to the department with the direction that Mr X is a person in respect of whom Australia has protection obligations because he is a refugee, therefore satisfying s 36(2)(a).

The department advised that Mr X's Protection visa application is being assessed under s 501.

The Ombudsman notes that Mr X's family resides in the Australian community and recommends that Mr X be considered for transfer to a facility that is closer to his family, such as Villawood IDC.