

## ASSESSMENT BY THE COMMONWEALTH OMBUDSMAN FOR TBLING 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 54 months (four and a half years). The previous assessment 1001534-O was tabled in Parliament on 24 May 2017. This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1980
<b>Ombudsman ID</b>	1001534-01
<b>Date of department's reports</b>	5 June 2017 and 8 December 2017
<b>Total days in detention</b>	1,640 (at date of department's latest report)

### Recent detention history

Since the Ombudsman's previous assessment, Mr X remained at Yongah Hill Immigration Detention Centre (IDC).	
9 February 2017	Transferred to Maribyrnong IDC.
24 July 2017	The Department of Home Affairs (the department) advised that Mr X had since been transferred to Melbourne Immigration Transit Accommodation (MITA).

### Recent visa applications/case progression

13 May 2016	Issued with a Notice of Intention to Consider Refusal of his Partner visa under s 501 of the <i>Migration Act 1958</i> . Mr X provided responses on 7 November 2016, 19 December 2016, 23 March 2017 and 13 June 2017.
19 June 2017	Partner visa refused under s 501.
20 September 2017	The Administrative Appeals Tribunal (AAT) affirmed the refusal decision.
20 October 2017	Applied to the Federal Court (FC) for judicial review of the AAT decision.
8 December 2017	The department advised that Mr X had been identified for possible referral to the Minister for consideration under ss 195A and 197AB for the grant of a bridging visa or community placement.

### Health and welfare

International Health and Medical Services advised that Mr X has a history of anxiety related to his separation from his family, the length of time he has remained in detention and the uncertainty of his future. Mr X attended counselling on a fortnightly basis and continued to be monitored by the mental health team as required.

### Other matters

Mr X's Australian citizen wife and extended family reside in Melbourne.

### **Information provided by Mr X**

During an interview with Ombudsman staff on 23 June 2017 Mr X advised that his continued detention has been very hard for his wife and family. He stated that his family visits him every day now that he has been transferred to Maribyrnong IDC and he calls his family in Country A when he can afford to.

Mr X explained that he does not understand why he remains in detention, and feels like he continues to be punished for a crime he committed over 12 years ago. He already spent time in jail in Country B, and for the five and a half years he has spent in Australia he has made no mistakes and has not committed any crimes. He spent one year and eight months on a bridging visa and enjoyed working in the community. He said that it is very frustrating to see other people released that have had trouble with the justice system or have had behavioural concerns in immigration detention.

Mr X stated that his physical health is pretty good, but that he often feels quite stressed. He explained that he does not want to take medication for his mental health because he does not think it will really help, and he attends counselling but feels like the benefits of counselling disappear when the session is over.

Both Mr X and detention centre staff advised that Mr X's behaviour in detention has been excellent and that he helps diffuse arguments and settle in new detainees. Mr X had been offered a transfer to MITA but he was unsure whether he would like to be transferred as it would increase his wife's travel time when visiting him.

### **Ombudsman assessment**

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 more than four and a half years.

The Ombudsman's previous assessment recommended that consideration be given to placing Mr X in a detention facility closer to his family.

On 24 May 2017 the Minister advised that Mr X had been transferred to a centre closer to his family.

Mr X's Partner visa was cancelled under s 501 on 19 June 2017. On 20 September 2017 the AAT affirmed the refusal decision and on 20 October 2017 Mr X applied to the FC for judicial review.

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 has advised that Mr X has a history of anxiety related to the length of time he has remained in immigration detention and the uncertainty of his future.

Mr X has reportedly been of excellent behaviour and has remained in immigration detention for an extended period of time. The Ombudsman notes that the department advised on 8 December 2017 that Mr X had been identified for possible referral to the Minister for consideration under ss 195A and 197AB for the grant of a bridging visa or community placement.

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