

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

Name	Mr X
Citizenship	Country A
Year of birth	1982
Ombudsman ID	1002626-O
Date of DIBP's reports	20 March 2017 and 18 September 2017
Total days in detention	914 (at date of DIBP's latest report)

Detention history

19 March 2015	Detained under s 189(1) of the <i>Migration Act 1958</i> following his release from a correctional facility. He was transferred to Villawood Immigration Detention Centre (IDC).
22 July 2015	Transferred to Christmas Island IDC.
1 October 2015	Transferred to Yongah Hill IDC.
15 June 2017	Transferred to Christmas Island IDC.

Visa applications/case progression

7 July 2007	Arrived in Australia on a partner visa.
4 March 2013	Issued with a Notice of Intention to Consider Cancellation of his partner visa under s 501 following criminal convictions. Mr X provided a response on 27 March 2013.
5 May 2013	The Department of Immigration and Border Protection (the department) finalised an International Treaties Obligations Assessment (ITOA), determining Mr X's case engaged Australia's <i>non-refoulement</i> obligations.
18 December 2013	Partner visa cancelled under s 501.
9 April 2014	Lodged a Protection visa application.
3 February 2016	Protection visa application refused.
11 March 2016	Applied to the Administrative Appeals Tribunal (AAT) for merits review.
2 May 2016	AAT affirmed original decision.
6 May 2016	Requested removal from Australia.
19 December 2016	Requested ministerial intervention under s 501 for the Minister to set aside the decision of the AAT and substitute it for a more favourable decision.
20 December 2016	Withdrew his application for voluntary removal.
17 January 2017	Found to meet the guidelines for referral to the Minister under s 501.

20 March 2017	The department advised that it had lodged an application for a travel document for Mr X with the authorities of Country A.
19 July 2017	The department finalised a second ITOA determining Mr X's case engaged Australia's <i>non-refoulement</i> obligations.
18 September 2017	The department advised that Mr X's request for ministerial intervention under s 501 remained ongoing.

Criminal history

August 2011	Convicted of a sex offence and sentenced to four years imprisonment.
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Health and welfare

International Health and Medical Services (IHMS) advised that Mr X engaged with the mental health team and attended specialist counselling for the management of major depressive disorder and a history of torture and trauma. He reported symptoms of low mood, anxiety and panic attacks associated with the possibility of being removed from Australia. In 2015 and 2017 a psychologist advised that the speedy resolution of his immigration status would benefit his mental health and prevent further deterioration.

IHMS further advised that Mr X received treatment and was reviewed by specialists for the management of a complex and painful urological concern.

Information provided by Mr X

During an interview with Ombudsman staff on 24 May 2017 Mr X stated that it was not safe for him to return to Country A, but that remaining in immigration detention felt like psychological torture. He explained that the uncertainty of how long he would remain in immigration detention made life very hard, and he felt stressed and could not sleep. He advised that he used to attend counselling to manage his distress, but he did not find it helpful anymore because they could not change his circumstances.

Mr X advised that his partner lives in Sydney, and he has made several requests to be transferred to Villawood IDC. He is worried about how long he will spend in immigration detention, and stated that he just wants to be able to start a family and continue his career. He explained that while living in the community he was able to work to support his mother who now had to rely on a pension.

Ombudsman assessment/recommendation

Mr X was detained on 19 March 2015 and has remained in an immigration detention facility for more than two and a half years.

Mr X's Protection visa application was refused on 3 February 2016. However, on 19 July 2017 an ITOA determined that Mr X's case engaged Australia's *non-refoulement* obligations.

At the time of the department's latest report, Mr X's request for ministerial intervention under s 501 for the substitution of a more favourable decision remained ongoing.

Given the ongoing nature of Mr X's mental health concerns, the Ombudsman recommends that he be transferred to Villawood IDC to benefit from being closer to his partner.